SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 602

CAVOUR HARTLEY, EXECUTOR OF THE ESTATE OF G. G. HARTLEY, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May Term, 1934, of said Court, before the Honorable Kimbrough Stone and the Honorable Archibald K. Gardner, Circuit Judges, and the Honorable Matthew M. Joyce, District Judge.

Attest:

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Seal)

Be It Remembered that heretofore, to-wit: on the seventh day of February, A. D. 1934, a record on petition to review the decision of the United States Board of Tax Appeals in the case of Commissioner of Internal Revenue, Petitioner vs. Cavour Hartley, Executor of the Estate of G. G. Hartley, Respondent, and on the twelfth day of February, A. D. 1934, a record on petition to review the decision of the United States Board of Tax Appeals in the case of Cavour Hartley, Executor of the Estate of G. G. Hartley, Petitioner, vs. Commissioner of Internal Revenue, Respondent, were filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, which said records as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

a (Order Extending Time to File Record to December 1, 1933, in No. 9946.)

United States Board of Tax Appeals.

Cavour Hartley, Executor of the Estate of G. G. Hartley, Petitioner,
Docket No. 42343. vs.
Commissioner of Internal Revenue, Respondent.

On motion of counsel for the respondent, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above entitled proceeding by the United States Circuit Court of Appeals, Eighth Circuit, be and it is hereby extended to December 1, 1933.

(signed) LOGAN MORRIS,
Member.

Dated Washington, D. C., October 24, 1933.

Now, January 25, 1934, the foregoing order enlarging time certified from the record as a true copy.

(Seal) B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

(Endorsed): Filed in the United States Circuit Court of Appeals for the Eighth Circuit on February 7, 1934, E. E. Koch, Clerk.

(Order Extending Time to File Record to January 5, 1934, in No. 9946.)

On motion of counsel for the respondent, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above entitled proceeding by the United States

Circuit Court of Appeals, Eighth Circuit, be and is hereby extended to January 5, 1934.

(signed) EUGENE BLACK,
Member.

Dated Washington, D. C., November 29, 1933.

Now, January 25, 1934, the foregoing order enlarging time certified from the record as a true copy.

(Seal) B. D. GAMBLE,
Clerk, U S. Board of Tax Appeals.

(Endorsed): Filed in the United States Circuit Court of Appeals for the Eighth Circuit on February 7, 1934, E. E. Koch, Clerk.

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b (Order Extending Time to File Record to February 7, 1934, in No. 9946.)

On motion of counsel for the respondent, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above entitled proceeding by the United States Circuit Court of Appeals, Eighth Circuit, be and it is hereby extended to February 7, 1934.

(signed) EUGENE BLACK,
Member.

Dated Washington, D. C., Dec. 28, 1933.

Now, January 25, 1934, the foregoing order enlarging time certified from the record as a true copy.

(Seal) B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

(Endorsed): Filed in the United States Circuit Court of Appeals for the Eighth Circuit on February 7, 1934, E. E. Koch, Clerk.

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c (Order Extending Time to File Record to December 1, 1933, in No. 9943.)

United States Board of Tax Appeals.

Commissioner of Internal Revenue, Petitioner,
Docket No. 42343. vs.
Cavour Hartley, Executor of the Estate of G. G. Hartley, Respondent.

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above entitled proceeding by the United States Circuit Court of Appeals, Eighth Circuit, be and it is hereby extended to December 1, 1933.

(signed) LOGAN MORRIS,
Member.

Dated Washington, D. C., October 24, 1933.

Now, January 29, 1934, the foregoing order enlarging time certified from the record as a true copy.

(Seal)

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

(Endorsed): Filed in the United States Circuit Court of Appeals for the Eighth Circuit on February 7, 1934, E. E. Koch, Clerk.

(Order Extending Time to File Record to January 5, 1934, in No. 9943.)

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above entitled proceeding by the United States Circuit Court of Appeals, Eighth Circuit, be and it is hereby extended to January 5, 1934.

(signed) EUGENE BLACK,
Member.

Dated Washington, D. C., November 29, 1933.

Now, January 29, 1934, the foregoing order enlarging time certified from the record as a true copy.

(Seal)

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

(Endorsed): Filed in the United States Circuit Court of Appeals for the Eighth Circuit on February 7, 1934, E. E. Koch, Clerk.

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d (Order Extending Time to File Record to February 7, 1934, in No. 9943.)

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above entitled proceeding by the United States Circuit Court of Appeals, Eighth Circuit, be and it is hereby extended to February 7, 1934.

(signed) EUGENE BLACK,
Member.

Dated Washington, D. C., Dec. 28, 1933.

Now, January 29, 1934, the foregoing order enlarging time certified from the record as a true copy.

(Seal) B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

(Endorsed): Filed in the United States Circuit Court of Appeals for the Eighth Circuit on February 7, 1934, E. E. Koch, Clerk.

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1 Docket Entries.

Cavour Hartley, Executor, Estate of G. G. Hartley, Petitioner,
Docket No. 42343 vs.
Commissioner of Internal Revenue, Respondent.

Appearances.

For Taxpayer: Frank W. Wilson, C. P. A., H. B. Fryberger, Esq.,

For Comm'r.: J. A. Lyons, Esq., C. A. Ray, Esq.

1929
Jan. 15—Petition received and filed. Taxpayer notified. (Fee paid)

" 16—Copy of petition served on General Counsel.

Mar. 14—Answer filed by General Counsel.

" 25—Copy of answer served on taxpayer—assigned General Calendar.

1930
Dec. 22—Motion to transfer to the St. Paul, Minn., Circuit Calendar filed by taxpayer. 12/23/30 granted.

1932

Jun. 13—Hearing set at St. Paul, Minn. beginning July 11, 1932.

Jul. 26—Hearing had before W. C. Lansdon at St. Paul, Minn. Submitted on merits. Briefs due Sept. 25, 1932. Called July 11, 1932.

Aug. 24—Transcript of hearing July 26, 1932 filed.

Sep. 23—Motion for extension to 10/15/32 to file brief filed by General Counsel. 9/24/32 granted.

" 24—Brief filed by taxpayer.

Oct. 15—Brief filed by General Counsel.

1933

Mar. 16—Findings of fact and opinion rendered, W. C. Lansdon, Div. 8. Decision will be entered under Rule 50.

May 5—Notice of settlement filed by General Counsel.

" 12—Hearing set May 31, 1933 on settlement under Rule 50.

" 31—Hearing had before Mr. Marquette, Div. 1 on settlement under Rule 50. Referred to Mr. Lansdon for decision.

Jun. 3—Decision entered, W. C. Lansdon, Div. 8.

Aug. 25—Petition for review by U. S. Circuit Court of Appeals (8) with assignments of error filed by taxpayer.

" 29—Petition for review by U. S. Circuit Court of Appeals (8) with assignments of error filed by General Counsel.

Sep. 1—Proof of service filed by taxpayer.

" 7—Proof of service filed by General Counsel.

Oct. 24—Motion for extension to Dec. 1, 1933 to complete and transmit record in both appeals filed by General Counsel.

" 24—Order enlarging time to Dec. 1, 1933 for preparation of evidence and delivery of record entered. (Taxpayer)

" 24—Order enlarging time to Dec. 1, 1933 for preparation of evidence and delivery of record entered. (General Counsel.)

Nov. 29—Order that time for preparation of evidence and delivery of record sur petition for review be extended to Jan. 5, 1934, entered. (Taxpayer.)

2

" 29—Motion for extension to Jan. 5, 1934 to complete and transmit record in both appeals filed by General Counsel.

" 29—Order that time for preparation of evidence and delivery of record sur petition for review be extended to Jan. 5, 1934 entered. (Commissioner.)

Dec. 28—Motion for extension to Feb. 7, 1934 to complete and transmit record filed by General Counsel.

Dec. 28—Order enlarging time to Feb. 7, 1934 for preparation of evidence and delivery of record entered. (General Counsel.)

Dec. 28—Order enlarging time to Feb. 7, 1934 for preparation of evidence and delivery of record entered (taxpayer).

1934

Jan. 12—Praecipe with proof of service thereon filed by taxpayer.

Jan. 12—Agreed statement of evidence lodged by taxpayer.

Jan. 15—Agreed statement of evidence approved and ordered filed.

Jan. 20—Praecipe with proof of service thereon filed by General Counsel.

Jan. 20—Agreed statement of evidence lodged by General Counsel.

Jan. 22—Agreed statement of evidence approved and ordered filed.

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3 (Petition of Cavour Hartley, Executor, etc., for Appeal.)

Filed January 15, 1929, United States Board of Tax Appeals.

United States Board of Tax Appeals.

Cavour Hartley, Executor, Estate of G. G. Hartley, Duluth, Minn., Petitioner,

Docket No. 42343 vs.

Commissioner of Internal Revenue, Respondent.

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his deficiency notice IT:AR:B-3-ML-60D dated November 22, 1928, and as a basis of this proceeding alleges as follows:

1. Petitioner is an individual as managing executor of the Estate of G. G. Hartley, deceased, with his principal office at 740 East Superior Street, Duluth, Minnesota.

2. Notice of deficiency (copy of which is attached and marked "Exhibit A") was mailed to the petitioner on November 22, 1928.

3. The taxes in controversy are income taxes for the calendar years 1924 and 1925 and for $3,261.02 for the year 1924 and $12,640.00 for the year 1925.

4. The determination of tax set forth in said notice of deficiency was based upon the following errors:

(a) Erroneous use by respondent of the appraised value at date of death of real estate as a basis for the computation of gain or loss upon the sale thereof and a like use of such appraised value as a basis for the computation of depreciation and depletion, petitioner having previously filed with respondent his written election, as provided in Section 702 in the Revenue Act of 1928, not to come within the provisions of section (a) of that Section.

(b) Erroneous computation of depletion deductions allowable for the years 1924 and 1925, in the following particulars:

1. Respondent failed to recognize the method of computing depletion which has been established in the United States District Court and the United States Circuit [—] of Appeals in Chicago, Illinois in the cases of Hull vs. McHale and McHale vs. Hull and of Spaulding vs. Reinecke and Reinecke vs. Spaulding.

2. Respondent has failed to allow petitioner depletion computed on the same basis as would have been allowed decedent had he not died, as provided for in Treasury Decision No. 4011.

3. Respondent has refused to allow any depletion to petitioner on certain mines, claiming that the tonnage of ore known to have been in such mines at the basic date was exhausted during the years here involved, notwithstanding that it is an accomplished fact that such ore was not exhaust[illegible].

(c) Disallowance by respondent as a deduction from income of petitioner of annuities paid in the year 1924 of $186.15 and in the year 1925 of $17,500.00, such annuities having been paid out of income pursuant to the provisions of the will of decedent and/or order of court.

(d) Disallowance by respondent as a deduction from gross income of petitioner of salaries, attorneys and accountants fees and expenses paid in the year 1924 in the amount of $14,909.58, and of salaries, expenses and accountants fees paid in the year 1925 in the amount of $8,882.11, such expenses having been paid by petitioner in the regular conduct of its business and in the production of income which respondent has computed as having been earned by petitioner.

(e) Disallowance by respondent as a deduction from gross income of petitioner of a net loss sustained by petitioner in the year 1923, such net loss amounting for the year 1924 to $75,100.60 and for the year 1925 to $52,820.57.

5. The facts upon which the petitioner relies as a basis of this proceeding are as follows:

The Estate of G. G. Hartley was created on January 17, 1922 upon the death of G. G. Hartley of Duluth, Minnesota. The assets of the estate consisted of large holdings of real estate, both improved and unimproved, included in which was the fee to a number of iron ore mines which were, at the date of the creation of the Estate, under leases on royalty bases. The administration of the estate has been extremely difficult and prolonged and, in fact, at the date of the filing of this petition is still in process. The administration of the estate has been unnecessarily prolonged through a series of more or less unfounded claims for income taxes which respondent has made against decedent and for estate taxes against the estate. During this period of administration it has been necessary for petitioner to operate the business of the estate, and the disputes involved in this petition are the result of such operation of the estate. The question of depletion raised herein leaves it for the Board to decide whether or not depletion should be allowed petitioner upon the basis which has been established in the courts as set forth in 4 (b) (1) above, or upon the basis of Treasury Decision 4011, and whether respondent is justified in refusing to allow any depletion for the extraction or payment of ore from some of the iron mines involved. Annuities paid under the provisions of the will of the decedent from income are deductible under law, whereas respondent has refused the allowance of such deductions in this case. Expenses paid

or incurred by petitioner in the conduct of the business of the estate are clearly allowable as deductions from gross income, although such expenses have been disallowed by respondent to the extent set forth above. Also, net losses sustained in the operation of a business in any year may legally be carried forward for the two succeeding years as deductions from gross income, whereas respondent has refused to allow such a net loss sustained in the year 1923 to be carried forward to either the year 1924 or the year 1925.

Wherefore, petitioner prays that this Board may hear this proceeding and determine upon what basis depletion should be computed, and allow as deductions from gross income annuities, expenses and net losses as set forth above.

FRANK W. WILSON,
Counsel for Petitioner,
514-517 Providence Building,
Duluth, Minnesota.

State of Minnesota,
County of St. Louis—ss.

Cavour Hartley, being duly sworn, says that he is the petitioner above named; that he has read the foregoing petition and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief and those facts he believes to be true.

CAVOUR HARTLEY.

Subscribed and sworn to before me this 11th day of January, 1929.

(Notarial Seal)

A. J. NOLAN,
Notary Public, St. Louis Co., Minn.

My Commission Expires Jan. 30, 1935.

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6 Exhibit "A".

November 22, 1928.

IT:AR:B-3
ML-60D.

Mr. Cavour Hartley, Executor,
Estate of G. G. Hartley,
740 East Superior St.,
Duluth, Minnesota.

Dear Sir:—

In accordance with Section 274 of the Revenue Act of 1926 you are advised that the determination of the tax

liability of the above-named estate for the years 1924, 1925 and 1926 discloses a deficiency of $15,901.02, as shown in the attached statement.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days from the date of the mailing of this letter for a redetermination of your tax liability. However, if you acquiesce in this determination, you are requested to executed the enclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention IT:C:P-7.

Respectfully,

D. H. BLAIR, Commissioner,
By ....
Acting Deputy Commissioner.

Enclosures:
Statement
Form 866
Form 882

Form 7928
SAB-1

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7 Statement.

November 22, 1928.

IT:AR:B-3
ML-60D

In re: Mr. Cavour Hartley, Executor,
Estate of G. G. Hartley,
740 East Superior Street,
Duluth, Minnesota.

Years	Deficiency in Tax
1924	$ 3,261.02
1925	12,640.00
1926	None
Total	$15,901.02

The report of the Internal Revenue Agent in Charge at St. Paul, Minnesota, covering an investigation of the books and records of the Estate of G. G. Hartley for the years 1924 and 1926, inclusive, has been reviewed in connection with information submitted in briefs dated July 27, 1928, and October 20, 1928, and at a conference held on October 16, 1928.

You are advised that the contentions of your representative have been denied.

The retroactive provisions of Section 702 of the Revenue Act of 1928 and the provisions of Treasury Decision 4177 (published in Internal Revenue Bulletin VII-29), are relied upon in support of the Bureau's use of the appraised value of real estate at the time of the death of the decedent as the basis for computing profit on the sale of real estate and in computing depreciation and depletion. It is noted that this basis was used in the returns as filed.

The adjustment of the returns is as follows:

1924		
Net loss reported on return		$52,820.57
Add:		
1. Other income	$ 1,092.84	
2. Losses reduced	100.00	
3. Contributions disallowed	3,000.00	
4. Other deductions disallowed	90,196.33	94,389.17
Total		$41,568.60
Deduct:		
5. Depletion		6,386.11
Net income as adjusted		$35,182.49

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Computation of Tax	
Net income adjusted	$35,182.49
Less:	
Personal exemption	1,000.00
Income subject to normal tax	$34,182.49
Normal tax at 2% on $ 4,000.00	$ 80.00
Normal tax at 4% on $ 4,000.00	160.00
Normal tax at 6% on $26,182.49	1,570.95
Surtax on $35,182.49	1,450.07
Total tax assessable	$ 3,261.02
Tax previously assessed	None
Deficiency in Tax	$ 3,261.02

Explanations

1. The amount of $1,092.84 has been included as income, representing the profit of the decedent for acting as agent in the sale of "Wisdom Lots."

2. The loss of $1,507.58 claimed with reference to condemned property has been reduced to $1,407.58, computed as follows:

Cost	$1,000.00
Cost of wrecking	1,258.08
Total cost	$2,258.08

Less:	
Depreciation	100.00
Depreciated cost	$2,158.08
Salvage	750.00
Loss	$1,407.58

3. The payment of $3,000.00 to St. Luke's Hospital on account of a subscription made by the decedent is held not to be deductible as a contribution since the will did not direct that this amount be paid out of income. A similar case was considered in Committee on Appeals and Review Recommendation 280, published in Internal Revenue Cumulative Bulletin III, Page 203.

4. The difference of $90,196.33 in "Other deductions" was computed as follows:

	Claimed on Return	Allowed	Difference
(a) Salaries	$ 23,535.13	$16,342.56	$ 7,192.57
(b) Annuities	4,000.80	3,814.65	186.15
(c) Expenses	2,633.60	1,316.80	1,316.80
(d) Attorney fees	5,000.00		5,000.00
(e) 1923 net loss	75,100.60		75,100.60
(f) Accountant's fee	2,000.21	600.00	1,400.21
	$112,270.34	$22,074.01	$90,196.33

(a) The deduction for office salaries has been reduced by $7,192.57, since it appeared that approximately 50 per cent of the total deduction was applicable to property distributed to heirs during 1924. No evidence has been furnished to indicate that such apportionment was incorrect.

(b) The deduction for annuities has been reduced from $4,000 to $3,814.65. Since annuities in the amount of $17,600.00 were to be paid out of interest received from Liberty Bonds and Northern Pacific Bonds set up for that purpose, only the excess not covered by these interest allowances will be deductible as follows:

Total interest received (Northern Pacific Bonds)	$ 2,250.00
Total interest received (Liberty Bonds)	14,535.35
Total	$16,785.35
Annuities paid	17,600.00
Excess deductible as being paid out of ordinary income	$ 814.65
Additional allowance made by court for maintenance of home	3,000.00
Total paid to Mrs. Hartley out of ordinary income and therefore deductible	$ 3,814.65

(c) The deduction for expenses has been reduced from $2,633.60 to $1,316.80 since it is considered that 50% of the expenses was incurred in connection with property which was distributed to the heirs. No evidence has been submitted to show such apportionment was incorrect.

(d) Attorney fees in the amount of $5,000.00 were disallowed as an expense of the administration of the estate. Article 292 of Regulations 65 relative to the Revenue Act of 1924 states that expenses of the administration of an estate such as court costs, attorney's fees and executor's commissions are chargeable against the corpus of the estate, and are not allowable deductions.

10 (e) The 1923 net loss is not deductible from income of subsequent years as this loss was not a statutory net loss as contemplated in Section 206 of the Revenue Act of 1924. This loss was sustained through the payment of Federal Estate taxes in 1923. It is held that the payment of an estate tax imposed upon the transfer of the estate of a decedent does not give rise to a loss resulting from the operation of the business of an estate. In support of its contention the Bureau refers to Income Tax Ruling 1803 published in Internal Revenue Cumulative Bulletin II-2, Page 36 and to the decision of the United States Board of Tax Appeals in the case of H. J. Schlesinger, published in United States Board of Tax Appeals reports, Volume 5, Page 943.

(f) Accountant's fees have been apportioned between administration and current work as follows:

Allowed for current estate work	$ 600.00
Disallowed as being administrative work in connection with income tax of decedent and Federal Estate Tax	1,400.21
	$2,000.21

The portion representing administrative work has been disallowed for the reasons set forth in paragraph (d) above.

5. The depletion deduction of $41,663.62 claimed on the return has been increased to $48,049.73, computed as follows:

Mine	Tons Paid for	Royalties Received	Depletion Rate	Depletion Sustained and allowed
McEwen	40,000	$ 6,000.00	.08529	$ 3,411.60
Brown #1	256,487	12,824.36	.01665	4,270.51
Brown #2	134,523	6,726.11	.02943	3,959.01
Judd	174,291	19,244.77	.08345	12,525.78**
Hemmens	80,000	10,000.00	.08318	2,233.25**

Snyder	710,592	62,176.77	.02479	17,615.58
Fletcher	30,000	1,312.52	.0304	912.00
Billings	100,000	9,375.00	.03122	3,122.00
Total		$127,659.53		$48,049.73

** Remainder of January 1922 value.

11

1925

Net Income

Net loss reported on return		$ 4,340.71
Add:		
1. Depletion reduced	$23,453.16	
2. Other deductions disallowed	79,202.68	102,655.84
Total		$98,315.13
Deduct:		
3. Interest reduced	$ 2,643.90	
4. Liberty Bond interest eliminated	14,399.00	17,042.90
Net Income as adjusted		$81,272.23

Computation of Tax

Net Income adjusted	$81,272.23
Less:	
Personal exemption	1,500.00
Income subject to normal tax	$79,772.23
Normal tax at 2% on $ 4,000.00	$ 80.00
Normal tax at 4% on 4,000.00	160.00
Normal tax at 6% on $71,772.23	4,306.33
Surtax on $81,272.23	8,101.72
Total Tax	$12,648.05
Less:	
Tax paid at source	8.05
Tax assessable	$12,640.00
Tax Previously assessed	None
Deficiency in tax	$12,640.00

Explanation of Changes

1. The deduction for depletion has been reduced from $67,272.81 to $43,819.65. The allowable depletion has been computed as follows:

12

Mine	Tons Paid for	Royalties Received	Depletion Rate	Depletion Sustained and Allowed
McEwen	40,000	$ 6,000.00	.08529	$ 3,411.60
Brown #1	389,643	19,482.13	.01665	6,487.56

Brown #2	130,247	6,512.33	.02943	348.59**
Judd	100,180	11,061.50	.08345	None
Hemmens	55,089	6,886.11	.08318	None*
Snyder	1,191,525	104,258.42	.02479	29,537.90
Fletcher	30,000	1,312.52	.0304	912.00
Billings	100,000	9,375.00	.03122	3,122.00
Total		$164,888.01		$43,819.65

**Remainder of January 1922 value.
*January 1922 value exhausted in 1924.

2. The item of "Other deductions" shown on the return has been reduced from $96,171.64 to $16,968.96. The difference of $79,202.68 was computed as follows:

	Claimed on Return	Allowed	Difference
(a) Salaries	$21,533.34	$15,341.67	$ 6,191.67
(b) Annuities	17,500.00	None	17,500.00
(c) Expenses	2,054.59	1,027.29	1,027.30
(d) 1923 net loss	52,820.57	None	52,820.57
(e) Accountant's fees	2,263.14	600.00	1,663.14
	$96,171.64	$16,968.96	$79,202.68

The deductions in question were disallowed for the reasons set forth in connection with the disallowance of similar deductions for the year 1925.

3. Interest income has been decreased from $5,056.69 to $2,412.79. The difference of $2,643.90 consists of interest which was used in paying annuities as provided in the decree of partial distribution made by the Probate Court as of January 1, 1924.

4. The Liberty Bond interest of $14,399.00 has been eliminated from the return as it represents payment of an annuity as explained in Item (3) above.

	1926		
Net loss reported on return			$30,269.92
Add:			
1. Depletion	$21,670.96		
2. Other Income	13.12		
3. Other deductions reduced	19,118.75		40,802.83
Total			$10,532.91
13 Total tax forwarded			$10,532.91
Deduct:			
4. Interest		$ 2,031.60	
5. Liberty Bond interest		15,468.40	17,500.00
Net loss adjusted			$ 6,967.09

Explanation of Changes

1. The depletion deduction has been reduced from $29,135.66 to $7,464.70, computed as follows:

Mine	Royalties Received	Tons Paid For	Depletion Rate	Depletion Deduction Allowed
McEwen	$ 6,000.00	40,000	.08529	$ 3,411.60
Brown #1	2,129.78	42,595	.01665	709.21
Brown #2	3,635.97	72,719	.02943	None **
Judd	2,315.09	20,966	.08345	None **
Hemmens	3,750.00	30,000	.08318	None **
Snyder	42,219.66	482,510	.02478	480.64*
Fletcher	1,312.52	30,000	.0304	910.00
Billings	4,687.50	62,500	.03122	1,951.25
Total	$66,050.52			$ 7,464.70

** January 1922 value exhausted.
* Remainder of January 1922 values.

2. The difference of $13.12 represents additional profit on the sale of "Wisdom Lots."

3. The item of "Other deductions" has been reduced from $37,473.12 to $18,354.37, computed as follows:

	Claimed on Return	Allowed	Difference
Expense	$19,973.12	$18,354.37	$ 1,618.75
Annuities	17,500.00	None	17,500.00
Total	$37,473.12	$18,354.37	$19,118.75

14 4 and 5. The incomes reported from interest and Liberty Bond interest have been reduced by $2,031.60 and $15,468.40, respectively, representing amounts paid as annuities as provided for in a decree of the Probate Court.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

You are advised that a copy of this communication has been transmitted to your attorney, Mr. Frank W. Wilson, 514 Providence Building, Duluth, Minnesota, who has on file in this office a duly recorded power of attorney.

15 (Answer of Commissioner of Internal Revenue.)

Filed March 14, 1929, United States Board of Tax Appeals.

United States Board of Tax Appeals.

Cavour Hartley, Executor, Estate of G. G. Hartley, Petitioner,

Docket No. 42343. vs.

Commissioner of Internal Revenue, Respondent.

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, in answer to the petition of the above-named taxpayer, admits and denies as follows:

1. Admits the allegations contained in the paragraph of the petition numbered 1.

2. Admits the allegations contained in the paragraph of the petition numbered 2.

3. Admits so much of the paragraph of the petition numbered 3 as alleges that the taxes in controversy are income taxes for the calendar years 1924 and 1925, and denies all other allegations contained in said paragraph of the petition numbered 3.

4. Denies that the respondent, in determining the deficiency taxes, committed errors as alleged in the paragraph of the petition numbered 4.

16 5. Admits so much of the paragraph of the petition numbered 5 as alleges that G. G. Hartley died January 17, 1922; that included in the assets of the estate of said G. G. Hartley was the fee to a number of iron ore mines which were, at the date of his death, under leases on a royalty basis; and denies all other allegations contained in said paragraph of the petition numbered 5.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore it is respectfully prayed that the determination of the Commissioner be approved,

(Signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:
Frank T. Horner,
Special Attorney,
Bureau of Internal Revenue.

FTH/y
3/12/29

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17 (Findings of Fact and Opinion of United States Board of Tax Appeals.)

United States Board of Tax Appeals.

Cavour Hartley, Executor, Estate of G. G. Hartley,
Petitioner,
vs.
Commissioner of Internal Revenue, Respondent.

Docket No. 42343. Promulgated March 16, 1933.

1. The petitioner was eligible to file his election not to come within the provisions of section 702 (a) of the Revenue Act of 1928 in the computation of gain or loss from the sale of property in his hands as executor of an estate, but if exercised, such election results only in the recomputation of gain or loss from the sale of assets in the hands of an estate under provisions of law effective at date of filing the return.

2. Reasonableness of salaries and expenses determined.

3. Payment of Federal estate taxes in 1923 may not be used in the determination of a statutory net loss applicabe to tax liability in the two years immediately subsequent.

Frank W. Wilson, Esq., and H. B. Fryberger, Esq., for the petitioner.

J. A. Lyons, Esq., and B. M. Coon, Esq., for the respondent.

The respondent has asserted deficiencies in income tax for the years 1924 and 1925 in the respective amounts of $3,261.02 and $12,640. A number of assignments of error originally urged by the petitioning executor in his petition have been abandoned and the cause, by agreement, submitted for

decision upon the question of whether or not the respondent, in his computation, committed error (1) in using the value of the estate properties at the date of the death of decedent as his basis for computing gain or loss from the sale of assets and allowance for the depletion and depreciation; (2) in reducing in amount or rejecting in full certain salary and expense items claimed as deductions from gross income of the estate, and (3) in denying deductions claimed on account of an alleged net loss carried over from 1923.

Findings of Fact.

The petitioner is executor of the estate of G. G. Hartley, who died January 11, 1922, leaving sundry real, per-
18 sonal and mixed properties valued at approximately $3,000,000, producing an annual gross income of something like $200,000. Included therein were some fifteen iron mines operated under royalty leases and several thousand pieces of real estate consisting of farms and improved rental city properties. The personal property comprised a miscellaneous quantity of investment and income securities. In the conduct of his business the decedent maintained a considerable office organization which was supervised by a general office manager who employed assistants, bookkeepers, stenographers, and an engineer who had supervision over collection of royalties on the iron mines.

A number of years before his death the decedent set aside a group of choice income properties consisting of four buildings as a special family gift. These were carried in an account designated "Hartley Family" and the business manager paid the income therefrom to the members of the Hartley family. Such income consisted wholly of rentals which tenants brought in and paid to the office manager who devoted not more than three days in each month to work in connection therewith. For this service he was paid $1,000 annually out of the "Hartley Family" income.

None of the assets of the estate were distributed until February 24, 1925, when there was a partial distribution under order of the probate court. The partial distribution included property worth approximately $2,000,000.

After assuming control of the estate, the executors maintained intact the organization built up by the decedent and continued to carry on the business in the same manner in which it had been theretofore conducted. After the distribution set out above such office organization managed and con-

ducted the distributed properties as if they were still included in the estate.

In petitioner's income tax return for the years in review the executors claimed certain deductions from gross income which the respondent disallowed in part or in toto. These claims and sums disallowed for the years are as follows:

	1924		1925	
	Amount paid	Amount disallowed	Amount paid	Amount disallowed
Salaries	$23,535.13	$7,192.57	$21,533.34	$6,191.67
Annuities	4,000.80	186.15	17,500.00	17,500.00
Expenses	2,633.60	1,316.80	2,054.59	1,027.30
Attorney's fees	5,000.00	5,000.00	.....	.....
Accountant's fees	2,000.00	1,400.21	2,263.14	1,663.14

In his income tax returns for 1924 and 1925, the petitioner deducted the respective amounts of $75,100.60 and
19 $52,820.57 as alleged net losses brought forward from 1923 which the respondent has disallowed.

The petitioner seasonably filed his income tax returns for the years 1924 and 1925. He reported for the first year a loss of $1,184.39, and the second year a gain of $255.05 resulting from the sale of capital assets. For the year 1924 he claimed a deduction on account of depletion of iron mines in the amount of $41,663.62 and for the year 1925 in the amount of $67,272.81. In the same returns he also claimed deductions on account of depreciation of rental property in amounts that are not in controversy. In such returns the basis used for computing gain or loss on sales of property and depletion and depreciation of iron mines and rental property was the appraised value of the various properties at the date of decedent's death in conformity with article 343 of Regulations 69, which was in effect at the date of the respective filings. Upon audit the respondent made numerous adjustments of profits from sales and of depletion and depreciation and determined the deficiencies in controversy. On July 27, 1928, petitioner filed with the Commissioner a written election not to have the income tax returns of the estate governed by the provisions of subsection 702 (a) of the Revenue Act of 1928.

Opinion.

Lansdon: The income of the petitioner for each of the years 1924 and 1925 included gains from the sale of cap-

ital assets, royalties from the production of iron mines held under lease and income from rental properties. In order to determine the correct tax liability for such years, it is necessary to establish the basis upon which gain from the sales must be computed. Under the applicable statute and regulations effective in those years, such basis must also be used in computing deductions from income on account of depreciation and depletion. In his income tax returns for the years under review, the petitioner computed profits from sales of property and deductions claimed on account of depreciation and depletion on the basis of the values of the several properties at date of decedent's death, but he now contends that the correct basis is that to which the decedent was entitled in his lifetime. In the determination of the deficiencies here involved the respondent accepts the bases used by the petitioner in his original returns. There is no controversy over the facts involved in this issue. The parties have agreed that if the respondent's determinations as to profits, depreciation and depletion are affirmed, no recomputation will be required, and that if the petitioner prevails, the figures necessary to recomputation are not in dispute and are included in the record. We are asked to decide only the question of law upon which the parties differ.

The basis for determining gain or loss from the sale of assets by the executor of an estate was in controversy for many years after the enactment of the first income tax law. In article 343, practically identical in Regulations 45, 62, 65 and 69, interpreting the Revenue Acts of 1918, 1921, 1924 and 1926, the Commissioner included the following:

> Where, however, the executor sells property of the estate for more than its value at the death of the decedent, the excess is income taxable to the estate.

Notwithstanding the rule established by the regulations, many executors filed estate income tax returns in which gain or loss was computed on the basis to which the decedent was entitled in his lifetime. Early in the history of the Board proceedings involving this question were instituted and our decisions have quite consistently followed the regulations above cited. Dorothy Payne Whitney Straight, Executrix, 7 B. T. A. 177; Charles G. Barnes et al., Executors, 8 B. T. A. 360; William P. Blodgett, et al., 13 B. T. A. 1243; Russel Wolfe, Executor, 15 B. T. A. 835; Central Trust Co., Executor, 19 B. T. A. 867; Richard de Z. Pierce et al., Executors, 22 B. T. A. 1070; and James C. Ayer et al., 26 B. T. A. 9. The courts very generally have adopted the rule included in the

regulations above cited and the Board's interpretation thereof. Bankers Trust Co. vs. Bowers, 23 Fed. (2d) 901; Eldridge vs. United States, 31 Fed. (2d) 924. Hereinafter this rule will sometimes be referred to as the old basis.

On May 3, 1926, the Court of Claims, in McKinney vs. United States, 62 Ct. Cls. 180, adopted the view that the basis for determining gain from the sale of capital assets by an estate should be that to which the decedent was entitled in his lifetime. This rule will sometimes be referred to hereinafter as the new basis. Thereafter, on April 6, 1927, the Commissioner abrogated his regulation relating thereto which had been consistently followed for many years and promulgated T. D. 4011, VI-1 C. B. 77, giving effect to such decision. This new regulation remained in effect until July 7, 1928, when the Commissioner, interpreting Nichols vs. United States, 64 Ct. Cls. 246, promulgated April 4, 1927, as a reversal of the decision in McKinney, supra, and for the purpose of giving effect to Dorothy Payne Whitney Straight, Executrix, supra, and Banker's Trust Co., supra, promulgated T. D. 4177, VII-2 C. B. 134, restoring the regulations to their original form. In Elmhurst vs. United States, 69 Ct. Cls. 295, the court reaffirmed its decision in McKinney, supra, and undertook to distinguish Nichols, supra.

In view of the conflict between the decisions of the Court of Claims, the Board and some Federal courts, and in
21 the light of varying positions of the Commissioner, it is obvious that prior to the enactment of the Revenue Act of 1928 the matter of determining the basis for computing gain from the sale of capital assets by an estate was very much in need of clarification. Many controversies involving the question were pending in the Bureau of Internal Revenue, in the courts and before this Board. Included therein were cases in which returns had been filed prior to April 6, 1927, in accordance with Regulations 45, 62, 65 and 69, and others which had been filed while T. D. 4011 was effective. It was this chaotic condition which the Congress undertook to correct and relieve in the Revenue Act of 1928.

In his report on the provisions of the Revenue Act of 1928, Chairman Green of the Ways and Means Committee said:

In view of the decision of the Court of Claims in the McKinney vs. United States, it is desirable specifically to provide what basis shall be used in determining gain or loss on the sale of property by an estate. It is believed that the basis should be the value of the property on the date of the decedent's death. • • •

Under existing law, the basis in such case is the value at the date of "acquisition" which is indefinite and has given rise to controversies. The value on date of death affords an equitable and more determinable base.

In conformity with the above statement Congress enacted section 113 (5) of the Revenue Act of 1928, which, so far as pertinent herein, is as follows:

Property Transmitted at Death.—If personal property was acquired by specific bequest, or if real property was acquired by general or specific devise or by intestacy, the basis shall be [for determining gain or loss] the fair market value of the property at the time of the death of the decedent. If the property was acquired by the decedent's estate from the decedent, the basis in the hands of the estate shall be the fair market value of the property at the time of the death of the decedent. * * *

The Revenue Act of 1928 was approved on May 29 of that year. On July 7, 1928, the Commissioner promulgated T. D. 4177 as set out hereinbefore and thereafter included the basis then accepted by Congress in article 596 of Regulations 74. The old basis was thus finally established in conformity with the decisions of this Board, of several courts and by Act of Congress as the legal and only rule for determining gain or loss from the sale of property in the hands of an estate in course of administration, but since section 113 (5) of the Revenue Act of 1928 is not retroactive, such basis at May 29, 1928, was settled law only as to the returns filed subsequent thereto. This enactment therefore in no way determined what the law was before the approval of the Revenue Act of 1928. One group of estates had filed returns prior thereto on the old, and another on the new, basis. A decision of the Supreme Court might establish either
22 the one or the other as the law at the several dates of the filing of such returns. No matter which basis was recognized by the court of the last resort, the estates filing to their disadvantage on that which was rejected would be entitled to relief if their returns had not been closed by agreement or by the statute of limitations, or their rights abridged by other conditions imposed by proper authority. Congress dealt with this situation by including section 702 (a) in the Act of 1928, which is as follows:

If in the return of any decedent's estate for any taxable year preceding the taxable year 1928, the basis, upon which gain or loss realized upon the sale or other disposition of

property acquired by the estate from the decedent was computed, was the value of the property at the time of the death of the decedent or was in accordance with the regulations in force at the time such return was filed, then the computation of such gain or loss shall be made upon such basis, unless claim for refund or credit in respect of such basis, or a written election not to come within the provisions of this subsection has been filed by the estate before the expiration of the period of limitation for filing claims.

In this proceeding the parties are in radical disagreement as to the effect of the election provided for in the law. The petitioner contends that having filed his return under the old, his election now entitles him to a recomputation of his tax liability under the new basis. The respondent has ruled in 9 C. M. 5215, VII-2 C. B. 97, and his counsel argues that Congress intended that only those estates which filed returns on the new basis should have the right of election. In our opinion the purposes of section 702 (a) are twofold. It is a statute of repose for all estates that were satisfied to settle their tax liabilities on the basis in effect when their returns were filed, and it is a relief provision for any estate that to its disadvantage had filed a return in conformity with regulations at date of filing, if such regulations were later held not to be in accordance with the law then effective. Congress could and did settle the basis to be used for all returns filed subsequent to the effective date of the Revenue Act of 1928, but it did not then know what would be the final judicial determination of the law prior to that date. Accordingly, section 702 (a) was framed to take care of estates coming under whichever basis was finally rejected as the law before the passage of the Act of 1928. It is now well settled that the old basis was the law at the date the petitioner filed his return. Brewster vs. Gage, 280 U. S. 327. The right of election therefore gives him nothing which he did not have before. If he had an appeal pending before the Bureau of Internal Revenue, the Board, or the courts, he could still prosecute on merits, but the computation of his profits from sales of property must be made on the old basis in conformity with Brewster vs. Gage, supra, and Dorothy Payne Whitney Straight, supra, and other decisions cited.

23 If the petitioner had filed his return under the new basis, his election would enable him to litigate his tax liability and he could properly plead that he had acted under a regulation which erroneously construed the law and ask for a redetermination on the basis finally established by judicial authority. It appears, therefore, that the

only purpose of section 702 (a) is to permit an estate within the specified categories to elect whether it will settle its tax liability as shown on a return filed in conformity with regulations temporarily effective at date of filing, but later abrogated, or decline to do so and ask for a redetermination under provisions judicially determined to be the law as such filing date.

It will be observed that section 702 (a) does not specifically include any reference to allowances for depletion and deduction. The parties have argued their respective contentions on the theory that it is not material whether the election grows out of a dispute over such allowance or over gain or loss from the sale of property. Since both are involved here, it is not now necessary to decide whether the subsection under review confers the right of election on those estates as to which the only dispute is over the correct basis for computing gain or loss. This proceeding calls for a determination of the proper basis for computing gain or loss on petitioner's sales of real estate in 1924 and 1925. We have determined that basis and it follows under section 204 (1) (b) of the Revenue Act of 1924 that allowances for depletion and depreciation must be computed in accordance therewith.

In each of the taxable years the respondent disallowed parts of the deductions claimed by the petitioner on account of salaries and expenses, on the theory that the rejected amounts fairly represent the ratable part of such charges which should be allocated to the management of portions of the estate distributed to the heirs of the decedent and also that some part of such charges was for the management of the "Hartley Family" account. The administration of the "Hartley Family" account was confined to the very simple procedure of receiving rents from the tenants of the four buildings which constituted the corpus of that gift and distributing the same to the beneficiaries. That service required only about three days in each month and for it the manager received a salary of $1,000 per year out of the family fund. Such salary was not claimed as a deduction by the petitioner and is not a basis for the disallowance of its expense claim.

The facts disclose that no part of the estate was distributed in 1924 and that the charges for expenses and salaries claimed as deductions in that year were necessary and reasonable in a business as complicated and extensive as

that of the petitioner. The determination of the re-
24 spondent in this respect for the year 1924 is reversed.

It is in evidence that the bulk of the Hartley estate was distributed by the proper court on February 27, 1925, but that such property continued to be managed by the executor's business organization. We conclude from this that petitioner has failed to overcome the presumptive correctness of the respondent's determination that one-half the charges for expenses and salaries in 1925 should be allocated to the management of distributed property then owned by the heirs of the decedent. The determination of the respondent in respect of salaries and expenses for the year 1925 is affirmed.

The petitioner has abandoned his contention that the annuity payments in 1924 and 1925 in the respective amounts of $186.15 and $17,500 are deductible from income in such years. On brief his counsel also concedes that respondent properly disallowed attorney's fees in the amount of $5,000 in the year 1924. It follows, therefore, that the determination of the respondent as to such claimed deductions must be affirmed.

No evidence has been adduced sufficient to enable us to determine that petitioner sustained any loss in 1923. The petitioner contends that the alleged loss resulted from the payment of estate taxes in such years. Even if the proof were sufficient to establish the amount of the loss, it could not be regarded as the basis for net loss to be carried forward in the determination of tax liability in any subsequent year. H. J. Schlesinger, 5 B. T. A. 943; Lawrence J. Montgomery, 17 B. T. A. 1308. On this issue the determination of the respondent is affirmed.

Reviewed by the Board.

Decision will be entered under Rule 50.

Arundell, Van Fossan, and McMahon concur in the result.

Morris dissents.

Murdock, dissenting: The period within which a claim for refund or credit may be effectively filed begins with the time the tax was paid. The findings of fact do not disclose when any tax was paid. Consequently, I cannot determine whether the election was timely filed on July 27, 1928. But assuming that it was timely filed, section 702. (a) of the Revenue Act of 1928 deals only with the computation of gain or loss and has nothing whatever to do with the basis for

depletion and depreciation. Some of the properties upon which depletion and depreciation are being claimed in this case were not sold and section 702 (a) can have no bearing upon the issue raised in connection with those properties.

The Board is not justified in reversing the Commissioner's disallowance of the salary deduction for 1924 on the facts found.

Goodrich agrees with this dissent.

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25 (Order of Redetermination, June 3, 1933.)

United States Board of Tax Appeals.

Estate of G. G. Hartley, Petitioner,
Docket No. 42343. vs.
Commissioner of Internal Revenue, Respondent.

Pursuant to the findings of fact and opinion promulgated March 15, 1933, the respondent filed a computation under Rule 50 on May 5, 1933. Due notice having been given to the parties and the proceeding having been called for settlement from the Day Calendar of May 31, 1933, at which time there was no objection to the computation filed, it is

Ordered and Decided: That there are deficiencies for 1924 and 1925 in the respective amounts of $1,745.47 and $12,640.

(Signed) W. C. LANSDON,
Member.

(Seal)

Enter:
Entered
June 3, 1933

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26 (Petition of Cavour Hartley, Executor, etc., for Review of Decision of United States Board of Tax Appeals.)

Filed August 25, 1933, United States Board of Tax Appeals.

United States Board of Tax Appeals.

Cavour Hartley, Executor of the Estate of G. G. Hartley, Petitioner,
Docket No. 42343. vs.
Commissioner of Internal Revenue, Respondent.

The above named petitioner, Cavour Hartley, Executor of the Estate of G. G. Hartley, is aggrieved by the decision of

the United States Board of Tax Appeals rendered against him on the 3rd day of June, 1933, in the case of Cavour Hartley, Executor of the Estate of G. G. Hartley, versus Commissioner of Internal Revenue, No. 42343 on the docket of the Board and respectfully submits his petition for review thereof by the United States Circuit Court of Appeals for the Eighth Circuit. For cause the petitioner respectfully shows as follows:—

Statement of Nature of the Controversy:

1. Petitioner is an individual as managing executor of the Estate of G. G. Hartley, Deceased, with his principal office at 740 East Superior Street, in the City of Duluth, Minnesota.

2. That on November 22, 1928, the respondent, Commissioner of Internal Revenue, determined a deficiency in income tax for said estate for the calendar year 1924 of $3261.02, and for the year 1925 the sum of $12,640.00, or a total deficiency of $15901.02. On the 15th day of January, 1929, the petitioner filed with the United States Board of Tax Appeals his petition for redetermination of said
27 deficiency and the respondent thereafter duly filed his answer to petitioner's petition. The questions in controversy before the Board of Tax Appeals were whether or not the respondent in his computation committed error:—

1st. In using the value of estate's properties at the date of decedent's death as his basis of computing gain or loss of capital assets and the allowance of depreciation or depletion of certain properties.

2nd. In reducing in amount or rejecting in full certain salary and expense items claimed as deductions from the gross income of the estate.

3rd. In denying deductions claimed on account of alleged net loss carried over from 1923.

All of the remaining assignments of error originally urged by the petitioner executor in his petition were abandoned and the cause by agreement submitted to the United States Board of Tax Appeals for decision upon the said three assignments of error.

The decedent, G. G. Hartley, died on the 11th day of January, 1922, leaving real, personal and mixed property of the approximate value of Three Million Dollars, producing an annual gross income of approximately Two Hundred Thousand Dollars. Included among the assets were some

fifteen (15) iron mines under leases on royalty bases and several thousand pieces of real estate, improved and unimproved, including farms and improved rental city properties; the personal property consisted of investment and income securities; the administration of the estate was difficult and prolonged and was still in process at the time of the filing of the petition for redetermination of the deficiency and this prolongation of the time was largely the result of a series of claims for income tax made against the decedent and against the estate and which proved to be largely unfounded; during this period of administration it was
28 necessary for the petitioner to operate the business of the estate and in the conduct of the business of the estate the petitioner, as managing executor of the estate, maintained the same office organization used by the decedent in the conduct of his business, which organization was supervised by a general office manager, who, in turn, employed an assistant, bookkeepers, stenographers and an engineer who had supervision of the collection of royalties on the iron mines. The decedent had some years prior to his death set aside a group of income properties to his family, which properties consisted of four buildings and were carried in an account designated "Hartley Family" and the income therefrom, consisting of rentals, was paid by the business manager to the members of the Hartley Family and for this service he was paid One Thousand Dollars ($1,000.00) annually out of the Hartley Family income. The office manager devoted not more than three days in each month to such work. There was a partial distribution made of the assets of the estate by the Probate Court on February 24, 1925, which distribution included property of the approximate value of Two Million Dollars. The executor maintained intact the decedent's organization and carried on the business in the same manner that it had been conducted by the decedent and the office organization continued to manage the distributed property after the distribution was made.

In the petitioner's income tax return for the years 1924 and 1925 the executor claimed certain deductions from gross income as follows:—

For the year 1924:	
Salaries	$23,535.13
Annuities	4,000.80
Expenses	2,633.60
Attorneys' fees	5,000.00
Accountants' fees	2,000.00

For the year 1925:

Salaries	$21,533.34
Annuities	17,500.00
Expenses	2,054.59
Attorneys' fees	.....
Accountants' fees	2,263.14

29 Of these deductions the respondent disallowed the following:—

For the year 1924:

Salaries	$ 7,192.57
Annuities	186.15
Expenses	1,316.80
Attorneys' fees	5,000.00
Accountants' fees	1,400.21

For the year 1925:

Salaries	$ 6,191.67
Annuities	17,500.00
Expenses	1,027.30
Accountants' fees	1,663.14

In his income tax returns for 1924 and 1925 the petitioner deducted the sums of $75,100.69 and $52,820.57, as alleged net losses brought forward from 1923 which the respondent has disallowed. The petitioner in his income tax returns for the years 1924 and 1925 reported a loss for the year 1924 in the sum of $1184.39 and a gain for the year 1925 in the sum of $255.05, resulting from the sale of capital assets; for the year 1924 petitioner claimed deduction on account of depletion of iron mines in the sum of $41,663.62, and for the year 1925 in the amount of $67,272.81; and also claimed deductions on account of depreciation of rental property in amounts that are not in controversy here. The petitioner in making such deductions conformed to Article 343 of Regulation 69 in effect at the date of the respective filings, which regulations provided that the basis for computing gains or loss on the sale of property and the depreciation should be the appraised value of the various properties at the date of the decedent's death. Upon audit the respondent made numerous adjustments of profit from sales and of depletion and depreciation and determined the deficiency in controversy. The petitioner on July 27, 1928, filed with the Commissioner his written election not to have the income tax returns of the estate governed by the provisions of subsection 702 (a) of the Revenue Act of 1928. Under date of March 16, 1933, the

Board of Tax Appeals promulgated its opinion. In the
30 determination of the deficiencies involved herein the basis used by the petitioner in his original returns were accepted by the respondent and no controversy on the facts was in issue upon this proposition. The Board decided the question as one of law and held that the basis for determining gain or loss in the sale of assets and depletion or depreciation of same in hand of the executor of an estate should be the fair market value of the property at the time of the death of the decedent.

The Board reversed the determination of the respondent in respect to deductions on account of salary and expenses for the year 1924 and affirmed the determination of the respondent in respect to the deductions on account of salaries and expenses for the year 1925 on the ground that the petitioner had failed to overcome the presumptive correctness of respondent's determination that one-half of the charges for expenses and salaries for 1925 should be allocated to the management of the distributed property. The Board affirmed the determination of the respondent on the issue of carrying forward the losses for the year 1923 and held that there was no evidence sufficient to enable the Board to determine that the petitioner sustained any loss in 1923, and even if proven it was not such as could be regarded as a basis for net loss to be carried forward in any subsequent year. Thereafter, and on June 3, 1933, the Board entered its formal decision redetermining the deficiency to be $1745.47 and $12,640.00 for the years 1924 and 1925 respectively.

Assignments of Error.

The petitioner believes and avers that errors were committed by the Board to his damage and prejudice as follows:

1. Entering judgment for respondent.

2. Failing to enter judgment for petitioner.

3. In redetermining the deficiency of $1745.47 for the year 1924, and $12,640.00 for the year 1925.

4. In holding as a matter of law that the basis for determining capital gains or losses and depreciation and depletion in the hands of the estate, shall be the fair market value of the property at the time of the decedent's death.

31 5. In failing to hold that the basis for determining gain from the sale of capital assets of the estate and for depreciation and depletion should be that to which the decedent was entitled in his lifetime.

6. In using the so-called "old basis" instead of the "new basis" in determining gain or loss from the sale of capital assets by the estate.

7. In holding that one-half of the charges for expenses and salary for the year 1925 should be allocated to the management of the distributed property, and in holding that the petitioner had failed to overcome the presumptive correctness of respondent's determination.

8. In holding the evidence insufficient to establish losses for the year 1923.

9. In holding that any losses for the year 1923 should not be carried forward in the determination of the tax liability in the subsequent years.

Wherefore, Your petitioner prays that the decision of the United States Board of Tax Appeals entered herein against him be reviewed and reversed by the United States Circuit Court of Appeals for the Eighth Circuit and that the Clerk of the Board of Tax Appeals be directed to transmit and deliver to the Clerk of said Court certified copies of all the documents necessary and material to the presentation and consideration of the foregoing Petition for Review, and as required by the rules of said Court and statutes made and provided; and your petitioner prays for such other and further relief as the Court may deem proper in the premises.

H. B. FRYBERGER,
H. C. FULTON,
E. L. BOYLE,
WILLIAM B. FRYBERGER,
Attorneys for Petitioner.

32 State of Minnesota,
County of St. Louis—ss.

Cavour Hartley, being duly sworn, says that he is the petitioner above named and the Executor of the Estate of G. G. Hartley, Deceased; that he has read said Petition for Review and is familiar with the statements therein contained; and that the facts therein stated are true, except such facts as may be stated on information and belief, and those facts he believes to be true.

(s) CAVOUR HARTLEY.

Subscribed and sworn to before me this 22 day of Aug., 1933.

(s) KATHERINE STEENBUCH,
(Notarial Seal) Notary Public, St. Louis County, Minn.

My Commission Expires June 7, 1939.

32a (Notice of Filing of Petition for Review by Cavour Hartley, Executor, etc., and Acknowledgment of Service.)

Filed September 1, 1933, United States Board of Tax Appeals.

Please Take Notice: That counsel for the petitioner has filed with the Clerk of the United States Board of Tax Appeals, his petition for a review, by the United States Circuit Court of Appeals of the Eighth Circuit, of the decision of the United States Board of Tax Appeals in the above entitled proceeding, a copy of which petition is enclosed herewith and hereby served upon you.

(s) CAVOUR HARTLEY, Executor of THE ESTATE OF G. G. HARTLEY, Petitioner.

(s) H. B. FRYBERGER,
(s) H. C. FULTON,
(s) E. L. BOYLE,
(s) WILLIAM B. FRYBERGER,
Attorneys for Petitioner.

To:
E. Barrett Prettyman,
General Counsel,
Bureau of Internal Revenue,
Washington, D. C.

Service of a copy of the foregoing is hereby acknowledged this 25th day of August, 1933.

(s) E. BARRETT PRETTYMAN,
General Counsel,
Bureau of Internal Revenue,
Attorney for Respondent.

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33 Statement of Evidence.

Filed January 15, 1934, U. S. Board of Tax Appeals.

In the United States Circuit Court of Appeals for the Eighth Circuit.

Cavour Hartley, Executor of the Estate of G. G. Hartley, Petitioner,

(B. T. A. No. 42343) vs.

Guy T. Helvering, Commissioner of Internal Revenue, Respondent.

The following is a statement of evidence in narrative form in the above entitled cause. This cause came on for hearing before Hon. William C. Lansdon, Member of the United States Board of Tax Appeals, on July 26, 1932. Frank W. Wilson, Esq., and H. B. Fryberger, Esq., appeared for the petitioner and C. M. Charest, General Counsel, Bureau of Internal Revenue, appeared for the respondent: (See footnote.)

Note: As used herein "petitioner" refers to the taxpayer and "respondent" refers to the Commissioner.

34 Counsel for the parties stipulated orally before the member sitting at the hearing

1. That the correct value of the properties at the date of the death of decedent is correctly shown by the deficiency notice, copy of which is attached to the petition.

2. That the deductions for depreciation, depletion, and the profit and losses on sales, computed on the basis to which the decedent would have been entitled had he been alive during 1924 and 1925, namely, cost or fair market value as of March 1, 1913, are shown on petitioner's Exhibit 1, attached hereto and hereby made a part of this statement.

3. That the figures being undisputed, both parties submitted to the board the legal question of whether the basis for determining depreciation, depletion and gain or loss should be the value of the property at the date of the death of decedent, as claimed by respondent, or that the basis should be that which decedent, had he lived, would have been allowed, as claimed by the petitioner.

4. That petitioner abandoned the issue regarding annuities, which is subparagraph (c) of paragraph 4 of the petition.

5. That the petitioner abandoned its contention, which was a part of subparagraph (d) of paragraph 4 of the petition, that the Commissioner erred in disallowing $5,-
35 000.00 paid for attorney's fees as a deduction from petitioner's income, petitioner admitting that said fee was for services in connection with the corpus of the estate.

6. That the Board should decide the question of law as to whether the estate was operating in such a manner of business as to be entitled to the net loss provision of the statute, and whether or not the item is such as should enter into that computation, and if it should become necessary to determine

the amount of this loss that they could agree, under Rule 50, as to the amount of the loss. That when the Board decided the law, counsel could then, if necessary, settle the facts under Rule 50.

MR. WILLIAM H. BURRIS, called as a witness by and on behalf of the petitioner, after being duly sworn, testified as follows:

Direct Examination.

My name is William H. Burris and I was employed by G. G. Hartley since 1890, up to the time of his death. After his death I worked for the estate of G. G. Hartley throughout the entire period of administration as general office manager and am still so employed. I was familiar with the duties of the employes of said estate for the years 1924 and 1925. I devoted my time to the business of the estate and also to other matters and was paid by the estate the salary stated in the income tax return of the estate. I received salary also from other people. During said time there was in the em-
36 ploy of the estate, H. L. Hartley, William E. McLeod and, I believe, Mr. Lathan, and also certain stenographers and the time of all of these parties was devoted to looking after the property and affairs of the estate. The first decree of distribution of the estate is the partial decree of distribution. A certified copy of this partial decree was offered and received in evidence as petitioner's exhibit 2, a copy of which is hereto attached and made a part of this statement of evidence. Later a final decree was entered—I think about 1928.

In addition to salaries paid by the estate there were certain expenses for travel, stationery, telephone, telegraph and that sort of thing incurred in connection with the property of the estate, in the amount of $1,316.80 for the year 1924, and $1,027.30 for the year 1925. This was while the property was in the possession of the executor.

Cross-Examination.

I went with Mr. Hartley first in 1890 and ever since about 1906 I have been looking after the work, books and everything else, general office work. There was no real estate distributed to the heirs until 1928, except one iron mine and that was leased to a corporation which paid royalties every three months, and an engineer looked after this property. We did not turn over the property to the heirs until 1928, and up to

that time they were exercising authority over it as executors and not as individuals.

In addition to the property of the estate there was an account called the "Hartley Family" consisting of property which Mr. Hartley gave to his children five or ten years
37 before his death, and I looked after that and was paid for looking after that. This was paid separate from the estate. It was choice income bearing property. Mr. Hartley thought when he first started this account that $1,000.00 a year would be about right to pay me and that is what they have paid me ever since. I was paid $5,000.00 a year for my services to the estate. I kept no separate account of my time but the property of the "Hartley Family" consisted of four buildings and the tenants bring in the rent, paying it into the office. There was no bother collecting it, as buildings of that kind were at a premium and we had no trouble. It did not take more than three days out of the month. While the estate business took from half past eight until half past five each day, except vacation.

Redirect Examination.

Up to the date of the partial final decree, which was dated on the 24th day of February, 1925, the estate had all of the property still in the hands of the executors. The Holman Mine was the only real estate which was distributed under this partial final decree.

Mr. Frank W. Wilson, called as a witness by and on behalf of the petitioner, after being duly sworn, testified as follows:

Direct Examination.

I am a public accountant and have had charge of the accounting in making up the returns in the Hartley Estate from time to time and am familiar with the returns and the figures of the estate. An election was made in writing with reference to the returns for 1924; under the provisions of Section 702 of the Revenue Act of 1928, I filed with the Commissioner of Internal Revenue, the election of the executor
38 of the estate of G. G. Hartley, not to come within the provisions of sub-section A of said Section 702 of the Revenue Act of 1928. I filed that election on July 27, 1928, and for all years prior to the date of filing election. The accountant's fees for the years 1924 and 1925, noted in the returns, were for services rendered almost altogether in connection with the current affairs of the estate as accountant

and income tax advisor and the amounts are set forth in the sixty day letter accompanying the petition. I was engaged during this period, to a considerable extent, in looking over the tax matters of Mr. Hartley, prior to his death, and the final settlement of those old cases came before the Board of Tax Appeals, I think, largely about 1928, and my services in that connection were paid principally at the conclusion of the contest on those cases.

CAVOUR HARTLEY, called as a witness by and on behalf of the petitioner, after being duly sworn, testified as follows:

Direct Examination.

I was the managing executor of the estate of G. G. Hartley from its inception until its final closing. I was employed in the office of my father prior to his death and was familiar with his business activities. My father's principal business was mining and real estate. He was interested in from ten to fifteen iron mines which produced a large amount of revenue from year to year. He also held large real estate holdings other than mining interests and there was considerable income from those holdings. There were several thousand of these holdings. My father maintained an office for
39 the operation of his business and employed a number of assistants and devoted all his business hours to these things and all his income was derived from his real estate and mining business and income from money that he had made from that business and invested.

After my father's death myself and the other executors continued to operate the business as my father had done and that continued until the final decree and we continued to employ the office help in the same way that he had done and maintained the office.

Cross-Examination.

The property of the estate was largely distributed in kind, though there may have been a few sales and the business of the respective properties was conducted by the executors until the distribution. There was no change in the conduct of the business connected with the properties after my father's death and up to the time of distribution, except that we tried a little harder to convert the properties into cash and were unable to do so, except in a few exceptional cases. It went along about the same as if my father had been there, except that he probably had more wisdom.

(Approval of Statement of Evidence by Counsel.)

The foregoing evidence is all of the material evidence adduced at the hearing before the Board of Tax Appeals, and the same is approved by the undersigned, E. Barrett Prettyman, General Counsel, Bureau of Internal Revenue, as attorney for the Commissioner of Internal Revenue.

E. BARRETT PRETTYMAN,
General Counsel, Bureau of
Internal Revenue.

40 The foregoing is all of the material evidence adduced at the hearing before the Board of Tax Appeals, and the same is approved by the undersigned, as attorneys for the petitioner on review (respondent on cross-review).

H. B. FRYBERGER,
H. C. FULTON,
WILLIAM B. FRYBERGER,
E. L. BOYLE,
Attorneys for Petitioner on Review
(Respondent on Cross-Review).

(Approval of Statement of Evidence by Member of United States Board of Tax Appeals.)

The foregoing is all of the material evidence adduced at the hearing and in order that the same may be preserved and made a part of the record, this statement of evidence is duly approved and settled this 15th day of January, 1934.

W. C. LANSDON,
Member, United States Board of
Tax Appeals.

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41 (Petitioner's Exhibit 1.)

Admitted in Evidence July 26, 1932, U. S. Board of Tax Appeals.

Treasury Department
Internal Revenue Service
St. Paul, Minn.

Dec. 6-1927

Office of
Internal Revenue Agent in Charge

Estate of G. G. Hartley,
Cavour Hartley, Executor,
740 East Superior St.,
Duluth, Minn.

In re: Estate of G. G. Hartley,
Duluth, Minn.

Date of report: Nov. 16, 1927

Years covered: 1924 to 1926, inclusive.

Dear Sir:

There is attached a statement of adjustments which this office proposes to recommend, affecting your income tax liability, and a form of waiver of your right to file a petition with the United States Board of Tax Appeals. If a deficiency is indicated and the adjustments suggested with respect thereto are satisfactory, and you desire that the recommendations be forwarded promptly to the Bureau at Washington for review and final determination, the waiver should be signed and forwarded to this office. Interest is payable on deficiencies found due as set forth on the attached form 882.

If you do not agree with the conclusions set forth in the inclosed statement it is desired that every opportunity be afforded you to present to this office any objections or additional information. You are accordingly granted thirty days from date of this letter within which you may, if you so desire, protest the proposed adjustments. The protest and any additional statement of facts must be submitted to this office, executed in triplicate under oath, and should contain the following information:

(a) The name and address of the taxpayer (in the case of an individual the residence, and in the case of a corporation the principal office or place of business); (b) in the case of a corporation the name of the State of incorporation; (c) the designation by date and symbol of the letter advising of the proposed deficiency with respect to which the protest is made; (d) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (e) an itemized schedule of the findings to which the taxpayer takes exception; (f) a summary statement of the grounds upon which the taxpayer relies in connection with each exception; and (g) in case the taxpayer desires a hearing, a statement to that effect.

If a protest is filed it will be given careful consideration in this office before the recommendations are forwarded to

Washington for action. In the event that you do not protest within the thirty-day period, the case will be forwarded immediately thereafter to the Bureau at Washington for Review.

In the event the recommendations are not approved upon review in Washington, you will be notified and given opportunity to discuss the changes with this office, or should you fail to protest to this office, any protest which you may subsequently file with Washington will be referred to this office for consideration.

If a deficiency is indicated no remittance should be made until you receive notice of assessment from the Collector of Internal Revenue for your district.

Please acknowledge receipt by return mail.

Respectfully,

G. W. KURTZ,
Internal Revenue Agent in Charge.

Inclosures:
Copy of report
Agreement form
Receipt
Form 850
Revised July, 1926

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Estate of G. G. Hartley,
Duluth, Minnesota.

Date of Report:
(Duluth, Minnesota)
Nov. 16, 1927.

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Preliminary Statement
Summary

Years	Additional tax	Overassessment
1924	207.63	—
1925	1,809.70	—
1926	—	—
		—
Net additional tax	$2,017.33	

Principal Causes of Additional Tax. Due to disallowance of 1923 net loss erroneously claimed as a deduction against years 1924 and 1925. Additional deductions, however, were allowed for these years as shown in following schedules, so that the net additional tax is considerably reduced from what it would be if the net loss had been the only adjustment.

Person With Whom Findings Were Discussed: Mr. Frank W. Wilson, accountant, for the Hartley Estate, was informed of all changes made in this report. He desired to review the report further before recommending agreement.

Business Connections: None.

Status and Reason for Exemption: Exemption of $1,000.00 allowed for 1924 and $1,500.00 for each of the years 1925 and 1926.

Important Features and Other Information: None.

Estate of S. A. Darling

Schedule [illegible]

BLOCK ADJUSTMENTS

Rate Income	(4,500.00)			3,105.00	(1,395.00)
Interest	895.00				895.00
Depr. & Depletion	10,000.00			10,000.00	20,000.00
Profit sales	(1,500.00	5,700.00			4,200.00
Other Income		1,000.00			1,000.00
Total Income	95,845.00	6,700.00	10,000.00	13,105.00	104,950.00
Taxes paid	20,000.00				20,000.00
Interest	1,500.00	300.00			1,200.00
Contributions	3,000.00	3,000.00			
Other deductions	110,000.00	90,106.33			88,076.01
Total deductions	134,437.15	93,506.33			99,915.00
Net Income	(38,000.00)	100,797.00		23,105.00	4,150.67
Total income					

Estate of O. O. Bartley

EXPLANATION OF AUDITOR CHANGES

Item 2. Income from business:

Loss from farm operations per return	($6,580.28)
Corrected loss from farm operations	(3,465.42)
Difference	(3,114.86)

The above net loss was sustained from the operation of the Island and Allendale farms, which were a part of the estate property. The receipts and allowable expenses for the year 19[illegible] were as follows:

Total receipts from farm operations		$30,085.19
Allowable Expenses	25,[illegible].41	
Depreciation Exhibit A	5,[illegible].80	31,[illegible].21
Corrected net loss		3,465.42

The difference of $3,[illegible].86 is due entirely to a change in depreciation as per Exhibit A.

Item 3. [illegible]:

Reported on return	2,051.66
Corrected	2,051.66
Difference	None

Item 5. [illegible] and Royalties:

Reported on return	102,869.53
Corrected	66,997.72
Difference	35,871.81

The difference of $35,871.81 consists of the following items:

Depreciation on rental property additional as per Exhibit F	1,8113.08
Depletion additional per Exhibit I	33,[illegible]58.73
Total additional depreciation and depletion	36,871.81

The corrected net income from rents and royalties was computed as follows:

Item	Amount Received	Depreciation & depletion	Expenses	Net Income
Rentals	$27,651.47	5,330.28	7,660.59	14,660.60
Royalty Item				
Mines	127,[illegible].53	76,[illegible].81		51,517.12
Rentals	[illegible]	[illegible]	7,660.59	65,997.72

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Estate of G. G. Hartley

Schedule 1-a (continued)

Explanation of Items Changed

Depreciation was allowed on March 1, 1913, value of property, or on cost if acquired subsequent to 3/1/1913, in accordance with T. D. 4011. Depletion was also allowed on basis established for the decedent as per Valuation Report by Metals Section of April 20, 1924 (IT: En:M:WCG)

Item 6, Profit from Sales:		
Report on return	Loss	($1,184.39)
Corrected		4,599.29
	Difference	5,783.68

The difference of $5,783.68 as shown above is due principally to a change in basis from the Appraised value at time of decedent's death, to original cost or March 1, 1913, value. The computation of the corrected profit is shown in Exhibit J.

Item 7, Dividends:	
Reported on return	None
Corrected	None
Item 8, Liberty Bond Interest, taxable	
Reported on return	None
Corrected	None
Item 9, Other Income:	
Reported on return	None
Corrected	1,092.84
Difference	1,092.84

The above income was derived from a transaction known as "Wisdom Lot Account," and consists of taxpayer's profit for acting as agent in the sale of lots. Computations are as follows:

Gross receipts 1924	5,602.40
Expenses	1,231.03
Gross profit	4,371.37
¾ of profit to owner	3,278.53
¼ to taxpayer	1,092.84
Item 12, Taxes:	
Reported on return	32,659.23
Corrected	32,659.23
Difference	None

The above item consisted of real estate, personal property, and other miscellaneous taxes paid during the year by this estate.

46 Item 13, Losses:

Claimed on return	$1,507.58
Corrected	1,182.58
Difference	325.00

The above loss was computed as follows:

Wrecking Allendale and Norris houses condemned by building inspectors.

Cost	1,000.00
Cost of wrecking	1,258.08
Total cost	2,258.08
Loss depreciation sustained per Exhibit A and Exhibit D	325.00
Depreciated cost	1,933.08
Loss salvage	750.50
Net loss	1,182.58

Item 15, Contributions:

Claimed on return	3,000.00
Allowed	None
Difference	3,000.00

This item is a payment made to St. Luke's Hospital on account of a subscription made by decedent. Since his will did not direct that this amount be paid out of income, it is here disallowed. ARR 280 CB No. 3, p. 203.

Item 16, Other deductions:

Claimed on return	112,270.34
Allowed	22,074.01
Difference	90,196.33

The difference of $90,196.33 was computed as follows:

Item	Claimed on Return	Allowed	Difference
Salaries	23,535.13	16,342.56	7,192.57-
Annuities	4,000.80	3,814.65	186.15
Expenses	2,633.60	1,316.80	1,316.80
Attorney fees	5,000.00	—	5,000.00
1923 Net loss	75,100.60	—	75,100.60
Accountants fees	2,000.21	600.00	1,400.21
Totals	112,270.34	22,074.01	90,196.33

47 Salaries were computed as follows:

Total to office employees	$14,385.13
To H. H. Hartley Island Farm Mgr.	9,150.00
Total	23,535.13
½ of office salaries disallowed as this is applicable to property distributed to heirs on January 1, 1924	7,192.57
Balance allowable	16,342.56

Annuities as provided for in the will and in the decree of partial distribution were as follows:

To Wm. Smith	100.00
B. F. Hartley	100.00
W. W. Hartley	1,200.00
Mary Rogers	1,200.00
Mrs. C. E. Hartley	15,000.00
Total	17,600.00

Since these annuities were to be paid out of interest received from Liberty Bonds and Northern Pacific Bonds set up for that purpose, only the excess not covered by these interest allowances will be deductible as follows:

Total interest received (N. P. Bonds)	$2,250.00—
" " Liberty Bonds	14,535.35—
	16,785.35
Annuities to Wm. Smith, B. F. Hartley, W. W. Hartley and Mary Rogers to be paid entirely out of Liberty Bond Interest as provided for in the will	2,600.00
Balance available for annuity to Mrs. Hartley	14,185.35 √
Amount paid to Mrs. Hartley	15,000.00
Excess deductible as being paid out of ordinary income	814.65
Add Additional allowance made by court for maintenance of home	3,000.00
Total paid to Mrs. Hartley out of ordinary income and therefore deductible	3,814.65 √

48 Item 16, Other deductions continued

Expenses of $2,633.60 are proportioned half and half between the estate and the heirs, on account of this proportion being expended and paid for by the estate in the collection of income and care of property which had been distributed to the heirs of this estate on January 1, 1924.

Attorney fees are disallowed in the amount of $5,000.00 as these fees were paid in connection with the administration of the estate.

O. D. 537, CB 2 — 175.

The 1923 net loss is not deductible from income of subsequent years as this loss was not a statutory net loss as contemplated in Section 206 of the Revenue Act of 1924. (This loss was sustained through the payment of Federal Estate taxes in 1923.)

1T: 1803 Dec. 1923 CB p 86 BTA Dec 2069 (5 BTA 943)

Accountant's fees are proportioned between administration and current work as follows:

Allowed for current estate work	$600.00
Disallowed as being administrative work in connection with income tax of decedent and Federal Estate Tax	1,400.21
Total	2,000.21

49 Treasury Department
Internal Revenue Service
Form 886P—Jan. 1927

Name of Taxpayer Estate of G. G. Hartley

Schedule No. 2 Year / ~~Period~~ } ended Dec. 31, 1924

Computation of Tax—1924 and Subsequent Years

Income Tax

Net income (from Schedule....)		$ 8,190.67
Less: Net loss (section 206)	$.....	
Capital net gain	.....	.....
Income subject to surtax		$.....
Less: Dividends	$.....	
Interest on Liberty Bonds, etc	.....	
Personal exemption and credit for dependents	1,000.00	1,000.00
Balances subject to normal tax		$ 7,190.67
Normal tax at 2 on $4,000.00	$ 80.00	
Normal tax at 4 on $3,190.67	127.63	
Normal tax at .....on $	.....	
Surtax on .....$	.....	
Tax at 12½% on capital net gain of $	.....	$.....
Fiscal year income from partnerships, etc.:		
Normal tax at .....on $	$.....	
Normal tax at .....on $	.....	
Normal tax at .....on $	.....	
Surtax on .....$	.....	.....
Total tax		$ 207.63

Less: Credit of 25% for earned net income (from Schedule..)	$.....	
Income tax paid at source	.....	
Taxes paid to a foreign country	.....	.....
Total tax assessable		$ 207.63
Tax previously assessed		None
Additional tax to be assessed (~~over assessment~~)		$ 207.63

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
FORM 888 J—Rev. July, 1937

Name Estate of S. B. Hartley

Schedule No. 3

1937

BLOCK ADJUSTMENTS

		Return	Additions to Income	Deductions from Income	Corrected	Wife's Income
1						
2	Farm Income	(17,250 61)	2,997 71		(14,252 90)	
3	Interest	5,056 69		2,843 90	2,212 79	
4						
5	Rents and Royalties	117,717 89		33,783 31	83,934 58	
6	Profit sales	255 05	906 11		1,161 16	
7						
8	L. B. Interest	18,399 00		18,399 00		
9	Other income	2,565 01			2,565 01	
10	Total Income	128,728 63	3,903 82	50,826 21	75,800 24	
11						
12	Taxes paid	30,891 70			30,891 70	
13						
14						
15						
16	Other deductions	96,171 68	79,202 66		16,968 96	
17	Total	127,063 38	79,202 66		47,860 66	
18	Net Income	(4,340 75)	483,105 50	50,826 21	27,939 58	
			Additions to Income	Deductions from Income		
			2997.71	33783.31		
			906.11	3902.19		
					27,179.99	
			Deductions from Income		23,453.16	
			Returned		3,726.83	
	TOTAL INCOME,					

Wife's net gain or loss _____ $ _____

Husband's net income or loss $ 27,939.58

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Schedule 3-A

Explanation of Items Changed

Item 2, Income from Business:

Reported on return, loss on farm operation	$17,250.61
Loss corrected	14,252.90
Difference	2,997.71

The above net loss was sustained from the operations of the Island and Allendale Farms, which were a part of the estate property. The receipts and allowable expenses for the year 1925 were as follows:

Total receipts from farm operation		$19,064.58
Expense allowable	30,617.83	
Depreciation as per Exhibit A	2,699.65	33,317.48
Corrected net loss		(14,252.90)

The difference of $2,997.71 is due entirely to a change in depreciation as per Exhibit A. In this report the cost on March 1, 1913, value to the decedent is used as a basis, instead of the appraised value at date of death as used in the return.

Item 3, Interest: Reported on return		5,056.69
Corrected		2,412.79
Difference		2,643.90

The difference of $2,643.90 consists of interest which was used in paying annuities as provided in the decree of partial distribution made by the Probate Court as of January 1, 1924. This decree provided for the setting aside of certain bonds the interest of which would be sufficient to pay annuities of $17,500.00. Interest was received as follows:

4¼% Liberty Bond interest		16,736.50
From the above are paid the following annuities:		
W. W. Hartley	1,200.00	
Mary Rogers	1,200.00	
Wm. Smith	100.00	2,500.00
Balance		14,236.50
Northern Pacific Bond Interest		3,046.28
Total		17,282.78

(Amount available to pay annuity of $15,000.00 to Mrs. C. E. Hartley)

52 $3,046.28 is 17.626% of $17,282.78

Therefore 17.626% of $15,000.00 was paid out of taxable N. P. Bond interest, or $2,643.90.

$3,046.28 less $2,643.90 is $402.38 amount taxable. The excess liberty bond interest was less than exemption allowed and there is none taxable.

Reconciliation:

Ordinary interest received on notes, etc.	$2,010.41
Plus excess N. P. Bond interest	402.38
Corrected interest	2,412.79

Item 5, Rents and Royalties

Reported on return	117,717.49
Corrected	83,934.18
Difference	33,783.31

The difference of $33,783.31 consists of the following items:

Additional depreciation on rental Buildings as per Exhibit F	1,813.02
Additional depletion per Exhibit I	31,970.29
Total additional depreciation and depletion	33,783.31

The corrected net income from rents and royalties was computed as follows:

Items	Amount received	Depreciation & Depletion	Expenses	Net Income
Rentals	28,002.82	5,530.28	4,183.27	18,289.27
Royalties and Iron Mines	164,888.01	99,243.10		65,644.91
Totals	192,890.83	104,773.38	4,183.27	83,934.18

Depreciation and depletion are allowed on same basis as to the decedent, instead of on appraised values on date of death.

53 Explanation of Items Changed

Item 6, Profit from sales:

Reported on return	255.05
Corrected Exhibit J	1,161.16
Difference	906.11

The difference of $906.11 as shown above was due to a change of basis. In the return the appraised values on date of death was used, whereas in this report the original cost basis or March 1, 1913, value was used. Reg. 69, Art. 243.

Item 7, Dividends:

Reported on return	None
Corrected	None
Difference	None

Item 8, Liberty Bond Interest

Reported on return	14,399.00
Corrected	None
Difference	14,399.00

The difference of $14,399.00 consists of Liberty bond interest which has been eliminated as being non taxable and for payment of annuity to Mrs. C. E. Hartley as explained under item 3 above

Item 9, Other income:

Reported on return	2,545.01
Corrected	2,545.01
Difference	None

Other income consisted of the following items and was found to be correctly reported.

Profit on Wisdom Lot contract	2,520.01	
Recoveries of former losses	25.00	
Total	2,545.01	

Item 12, Taxes:

Reported on return	30,891.70
Corrected	30,891.70
Difference	None

Taxes as reported were found to be correct.

54 Item 16, Other deductions:

Reported on return	$96,171.64
Corrected	16,968.96
Difference	79,202.68

The difference of $79,202.68 was computed as follows:

Items	Claimed on return	Allowed	Difference
Salaries	21,533.34	15,341.67	6,191.67
Annuities	17,500.00	—	17,500.00
Expenses	2,054.59	1,027.29	1,027.30
1923 Net Loss	52,820.57	—	52,820.57
Accountants fees	2,263.14	600.00	1,663.14
Totals	96,171.64	16,968.96	79,202.68

Salaries were computed as follows:

Office salaries	$12,383.34
H. H. Hartley Mgr. Island Farm	9,150.00
Total salaries	21,533.34
½ of office salaries applicable to income collected for heirs	6,191.67
Balance allowed as deduction	15,341.67

The above division of salaries was made due to the fact that the same office force was employed to collect and take care of income from property belonging to the heirs. One half has been allocated as applying to the estate business.

Annuities of $17,500.00 are eliminated here, since these annuities were paid from Liberty bond interest and Northern Pacific bond interest as specified in a decree of the probate court. See items 3 and 8 above.

Expenses of $2,054.59 were apportioned half and half between the estate and the heirs. These expenses applying to both of these interests.

The 1923 net loss is disallowed for same reasons as set forth under item 16 in Schedule 1-a.

55 Accountants fees are allowed in the following proportions as between current work and work in connection with decedent's income tax and Estate Federal taxes, these latter items being administration expenses and not allowable as a deduction:

Allowed for current work in connection with Estate tax returns	$600.00
Disallowed as being administration expenses in connection with income tax of decedent and Federal Estate Tax	1,663.14
Total	2,263.14

56 Treasury Department
Internal Revenue Service
Form 886P—Jan., 1927
Name of Taxpayer Estate of G. G. Hartley
Schedule No. 4 Year / Period } ended Dec. 31, 1925

Computation of Tax—1924 and Subsequent Years
Income Tax

Net income (from Schedule....)	$27,939.58
Less: Net loss (section 206) $.....	
Capital net gain	

Income subject to surtax			$ .....
Less: Dividends		$	
Interest on Libery Bonds, etc		.....	
Personal exemption and credit for dependents		1,500.00	1,500.00
Balances subject to normal tax			$26,439.58
Normal tax at 1½ on $ 4,000.00		$ 60.00	
Normal tax at 3 on $ 4,000.00		120.00	
Normal tax at 5 on $18,439.58		921.98	
Surtax on $27,939.58		715.77	
Tax at 12½% on capital net gain of $		.....	$ .....
Fiscal year income from partnerships, etc.			
Normal tax at .....on $		$	
Normal tax at .....on $		.....	
Normal tax at .....on $		.....	
Surtax on .....$		.....	.....
Total tax			$ 1,817.75
Less: Credit of 25% for earned net income (from Schedule..)		$	
Income tax paid at source		8.05	
Taxes paid to a foreign country		.....	8.05
Total tax assessable			$ 1,809.70
Tax previously assessed			None
Additional tax to be assessed (~~over-assessment~~)			$ 1,809.70

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Form 886 J—Rev. July, 1927

Name Estate of S. S. Hartley

Schedule No. 5

1926

BLOCK ADJUSTMENTS

	Return	Additions to Income	Deductions from Income	Corrected	Wife's Income
1					
2 Farm Income	(12,995 04)	3,185 85		(9,809 99)	
3 Interest	3,758 31		2,031 60	1,726 71	
4					
5 Rents and Royalties	53,827 97		11,765 02	42,062 95	
6 Profit sales	4,628 37		76 65	4,551 72	
7					
8 L. T. Interest	20,375 35		15,468 40	4,906 95	
9 Other income	2,890 60	13 12		2,903 72	
10 Total income	72,484 76	3,198 97	29,341 67	46,342 06	
11 Interest paid	7,621 75			7,621 75	
12 Taxes paid	57,699 81			57,699 81	
13					
14					
15					
16 Other deductions	37,873 12	19,118 75		18,354 37	
17 Total	102,794 68	19,118 75		83,635 93	
18 Net income	(30,309 92)	22,317 72	29,341 67	(37,293 87)	
TOTAL INCOME,					

Widow's net gain or loss _____ $ _____

Husband's net income or loss _____ $ (37,293.87)

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58 Schedule 5-a

Explanation of Items Changed

Item 2, Income from Business:

Reported on return Loss Farm operation	($12,995.84)
Correct loss	(9,809.99)
Difference	3,185.85

The above net loss was sustained from the operation of the Island and Allendale Farms. The receipts and allowable expenses as corrected are as follows:

Total receipts		25,665.71
Allowable expenses	32,776.05	
Depreciation Ex. A	2,699.65	35,475.70
Net loss		9,809.99

The difference of $3,135.85 is due entirely to depreciation as shown in Exhibit A. This being due to a change in basis, from the appraised value as used in the return, to the original cost or March 1, 1913, value as used herein.

Item 3, Interest:

Reported on return	3,758.31
Corrected	1,726.71
Difference	2,031.60

The difference of $2,031.60 consists of interest which was used in paying annuities to Mrs. C. E. Hartley as provided for in a decree of Probate Court. Since both Liberty Bonds and Northern Pacific Bonds were set aside by the Court for this purpose, it appears equitable that the annuity should be apportioned between the two sources of income. The annuities of $2,500.00 were to be paid entirely out of Liberty bond interest. Interest was received as follows:

4¼% Liberty Bond interest		21,650.35
From the above the following annuities are first paid:		
W. W. Hartley	1,200.00	
Mary Rogers	1,200.00	
Wm. Smith	100.00	2,500.00
Balance		19,150.35
Northern Pacific Bond interest		3,000.00
Available to pay $15,000.00 annuity.		22,150.35

59 $3,000.00 is 13.544% of $22,150.35

Therefore 13.544% of the $15,000.00 was paid out of Northern Pacific interest ($2,031.60) and the balance of $968.40 should be included as taxable income.

Reconciliation:

Ordinary interest received Notes, etc.	$758.31
Excess N. P. interest not used for annuities	968.40
Correct interest as above	1,726.71

Item 4, Rents and Royalties:	Reported on return	53,827.97
	Corrected	42,062.95
	Difference	11,765.02

The difference of $11,765.02 consists of the following items:

Additional depreciation on rental Bldgs. as per Exhibit F	1,478.90
Additional depletion as per Exhibit I	10,286.12
Total as above	11,765.02

The corrected net income from rents and royalties was computed as follows:

Items	Amount Received	Depreciation & Depletion	Expenses	Net Income
Rentals	27,364.62	5,530.28	6,400.13	15,434.21
Royalties	66,050.52	39,421.78		26,628.74
Totals	93,415.14	44,952.06	6,400.13	42,062.95

Depreciation and depletion are allowed on same basis as to the decedent, instead of on appraised values.

Item 6, Profit from Sales:		
	Reported on Return	4,628.37
	Corrected Exhibit J	4,551.72
	Difference	76.65

The difference of $76.65 as shown above was due to a change of basis, from the appraised value as used in the return to cost or March 1, 1913 value to decedent.

60 Item 6, Profit from Sales continued
Reg. 69 Art. 343.

Item 8, Liberty Bond Interest:		
	Reported on return	$20,375.35
	Corrected	4,906.95
	Difference	15,468.40

The corrected taxable interest from Liberty Bonds was computed as follows:

Balance Liberty Bond Interest available for payment of annuity of $15,000.00 (See item 3 above)	$19,150.35
$86.456 of $15,000.00 paid out of above item	12,968.40
Balance of Liberty Bond Interest	6,181.95

Exemption Interest on $ 5,000.00	212.50	
" " on $50,000.00 July 2, 1926	1,062.50	1,275.00
Balance taxable		4,906.95
Item 9, Other Income:		
Reported on return		2,890.60
Corrected		2,903.72
Difference		12.12

The difference of $13.12 consists of an error in reporting the profit from the Wisdom Lot contract as follows:

Wisdom lot contract:		
Total receipts	4,029.03	
¾ of profit paid to owners	2,634.17	
Balance taxable to estate	1,394.86	
Profit reported on return	1,381.74	
Difference	13.12	
61 Item 11, Interest paid:		
Reported on return		7,621.75
Corrected		7,621.75
Difference		None
Item 12, Taxes paid:		
Reported on return		57,659.81
Corrected		57,659.81
Difference		None

The above item includes State of Minnesota royalty taxes paid during the year in the amount of $28,535.10. The balance is real estate and miscellaneous taxes.

Item 16, Other Deductions:

Reported on return	37,473.12
Corrected	18,354.37
Difference	19,118.75

The difference of $19,118.75 was computed as follows:

Items	Claimed on return	Allowed	Difference
Expenses	19,973.12	18,354.37	1,618.75
Annuities	17,500.00	—	(17,500.00)
Totals	37,473.12	18,354.37	19,118.75

Expenses were computed as follows:

Total expenses per books	39,946.23	
Less proportion of expenses applicable to heirs	8,004.38	31,941.85
Less Administration Expenses		13,587.48
Amount allowed		18,354.37

Allowable expenses consist of the following items:

Salary to H. H. Hartley Mgr. Island Farm	9,150.00
Accountants fees for Current and Estate	1,200.00
½ of office salaries	8,004.37
Total	18,354.37

Annuities are eliminated as these were paid out of Liberty Bond interest and Northern Pacific Bond interest as explained in items 3 and 8 above.

Administration expenses consisting of attorney fees and accountants fees are disallowed as these items pertain to the administration of the estate and are not allowable deductions. Art. 292, Reg. 69.

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62 Treasury Department
Internal Revenue Service
Form 886P—Jan., 1927

Name of Taxpayer Estate of G. G. Hartley

Schedule No. 6 ~~Year~~ Period } ended 12/31/1926

Computation of Tax—1924 and Subsequent Years
Income Tax

~~Net income~~ (~~from Schedule~~ Loss)		$(37,293.87)
Less: Net loss (section 206)	$	
Capital net gain		
Income subject to surtax		$
Less: Dividends	$	
Interest on Liberty Bonds, etc	4,906.95	
Personal exemption and credit for dependents	1,500.00	6,406.95
Balances subject to normal tax		$ None
Normal tax at ....on $	$	
Normal tax at ....on $		
Normal tax at ....on $		
Surtax on ....$		
Tax at 12½% on capital net gain of $		$
Fiscal year income from partnerships, etc.:		
Normal tax at ....on $	$	
Normal tax at ....on $		
Normal tax at ....on $		
Surtax on ....$		
Total tax		$ None

Less: Credit of 25% for earned net income (from Schedule..)	$.....	
Income tax paid at source	.....	
Taxes paid to a foreign country	.....	.....
Total tax assessable		$ None
Tax previously assessed		None
Additional tax to be assessed (over assessment)		$ None

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Exhibit A

Depreciation Summary—Farm Buildings and Equipment

Description			Reserve to 12/31/23	Depreciation allowed 1924	1925	1926
Frame Buildings—						
Island Farm	Exhibit	B	18,001.37	2,155.53	2,155.55	2,155.53
Farm Machinery—						
Island Farm	"	C	37,008.41	1,715.15	—	—
Frame Building—						
Allendale Farm,	"	D	4,814.22	492.79	492.79	492.79
Stone Building—						
Allendale Farm	"	E	498.99	51.33	51.33	51.33
Totals			60,322.99	4,414.80	2699.65	2699.65
Debit to Reserve for disposition of Bldg.				325.00		
Debits to Reserve for Exhaustion of Mach.				38,723.56		
Amended Reserve			60,322.99	25,689.23	28,388.88	31,088.53
Total Depreciation allowed as amended				4,444.80	2,699.65	2,699.65
Total Depreciation claimed				1,330.00	5,697.36	5,885.50
Net Increase (Decrease)				3,114.80	(2,997.71)	(3,185.85)

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Exhibit B

Depreciation Farm Buildings and Equipment

Year	Corrected Balance close of period	Additions (Reductions)	Corrected Reserve	Depreciation 1924	1925	1926
(Frame Buildings—Island Farm Rate 3% Acq prior 3/1/13)						
12/31/23	71,850.85	None	18,001.37	2,155.53	2,155.53	2,155.53

Exhibit C

(Farm Machinery—Island Farm Rate 10% Acq. prior 3/1/13)

12/31/23	38,723.56	None	37,008.41	1,715.15	
1924		a (38,723.56)			

Exhibit D

(Frame Farm Buildings, Allendale Farm, Rate 3%. Acquired prior 3/1/13)

12/31/23	17,426.23	4,814.22			
1924	16,426.23 b(1,000.00)		492.79	492.79	492.79

Exhibit E

(Stone Buildings, Allendale Farm, Acquired Prior 3/1/13 Rate 2%)

12/31/23	2,566.27	498.99	51.33	51.33	51.33

(a) Farm machinery fully depreciated
(b) Farm building wrecked

65 Exhibit F

Depreciation Summary—Rental Property

Description	Reserve to 12/31/23	1924	1925	1926
No. 1, Exhibit G	4,875.00	450.00	450.00	450.00
No. 2, Exhibit G	2,600.00	240.00	240.00	240.00
No. 3, Exhibit G	2,708.33	250.00	250.00	250.00
No. 4, Exhibit G	6,500.00	600.00	600.00	600.00
No. 5, Exhibit G	2,708.33	250.00	250.00	250.00
No. 6, Exhibit G	4,080.50	—	—	—
No. 7, Exhibit G	12,499.67	1,177.49	1,177.49	1,177.49
No. 8, Exhibit H	5,043.50	483.99	483.99	483.99
No. 9, Exhibit H	5,025.98	717.80	717.80	717.80
No. 10, Exhibit H	10,612.36	1,361.00	1,361.00	1,361.00
Totals	56,653.67	5,530.28	5,530.28	5,530.28
Debit to Reserve for sale of assets		4,080.50		
Amended Reserve	56,653.67	58,103.45	63,633.73	69,164.01
Total Depreciation allowed as amended		5,530.28	5,530.28	5,530.28
Total Depreciation claimed		3,717.26	3,717.26	4,051.38
Net Increase (Decrease)		1,813.02	1,813.02	1,478.90

Estate of W. G. Hartley

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EXHIBIT A

DEPRECIATION Rental Property

Year and Month	Corrected Balance close of period	Additions (Reductions)	12/31/23 Corrected Reserve	1924	1925	1926
No. 1, Lot 7,8, B 11 Bell Add Rate 5%) Acq. 3/1/13 prior)						
12/31/23	9,000.00	None	4,875.00	450.00	450.00	450.00 -
No. 2, Lots 1, 2, 3, B. 7, Bell Add. Rate 3% (Ac. 3/1/13 Prior)						
12/31/23	8,000.00	None	2,600.00	240.00	240.00	240.00 -
No. 3, Blk. 11, 3d Add. Rate 5%) (Acq. 3/1/13Prior)						
12/31/23	5,000.00	None	2,708.33	250.00	250.00	250.00 -
No. 4, Blk 2 Central Add. Rate 6 2/3 (Acq. 3/1/13 Prior)						
12/31/23	7,500.00	None	6,500.00	600.00	600.00	600.00
No. 5, Blot 19, 21, E. Superior St. Rate 5%) Acq. 3/1/13 Prior)						
12/31/23	65,000.00	None	8,708.33	250.00	250.00	250.00
No. 6, Lots 41, 43, 45 E. Superior Acq. 3/1/13 Prior)						
12/31/23	7,469.08		4,080.50			
1924	- a	(7,469.08				
No. 7, Lots 29, 31. Rate 6 2/3 (Acq. 1918)						
12/31/23	18,115.18	None	12,499.67	1177.49	1177.49	1177.49

(a) Sale in 1924

Amt 2969.49
Exhibit A — 3567.19
Exhibit A — 5130.81
2149.15
17.9999

EXHIBIT E

DEPRECIATION - Rental Property

Year	Corrected Balance close of period	Additions after 12/31/23 (Reductions)	Corrected Reserve	Depreciation 1924	1925	1926
No. 8, Pillsbury Add. Rate 3%) Acq. 3/13 Prior)						
12/31/23	16,132.89	None	5,083.50	483.99	483.99	483.99
No. 9, Lots 6, 7, 8, Blk. 11, Rate 3%) Acq. 1917)						
12/31/23	23,926.52		5,025.98	717.80	717.80	717.80
No. 10, Portland Div. Office Bldg. Rate 2%)(Acq. 1915-16)						
12/31/23	68,050.00	None	10,612.36	1361.00	1361.00	1361.00

EXHIBIT I

COMPUTATION OF DEPLETION 1924-1925-1926

Mine	1924 Tons sold	Royalty Received	Unit Rate Depletion	Depletion allowed
Brown No. 1	256,487	12,824.35	3.1052¢	7,964.43
Brown No. 2	134,522	6,726.11	3.1052¢	4,177.20
Snyder	710,591	62,176.77	5.4342¢	38,614.94
McEwen	40,000	6,000.00	7.5905¢	3,036.20
Fletcher	30,000	1,312.52	1.8942¢	568.26
Semmens	80,000	10,000.00	7.7631¢	6,210.48
Judd	174,298	19,244.77	6.8574¢	11,951.90
Billings	100,000	9,375.00	3.5994	3,599.00
Totals		127,659.53		76,122.41
Depletion claimed				41,663.62
Difference				34,458.79
	1925			
Brown No. 1	389,042	19,482.13	3.1052¢	12,099.16
Brown No. 2	130,246	6,512.33	3.1052¢	4,044.40
Snyder	1,191,524	104,258.42	5.4342¢	64,769.80
McEwen	40,000	6,000.00	7.5905¢	3,036.20
Fletcher	30,000	1,312.52	1.8942¢	568.26
Semmens	55,088	6,886.11	7.7631¢	4,276.54
Judd	100,180	11,061.50	6.8574¢	6,869.74
Billings	100,000	9,375.00	3.5994	3,599.00
Totals		164,888.01		99,243.10
Depletion claimed				67,272.81
Difference				31,970.29

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Exhibit I

Computation of Depletion—1926

	1926 Tons sold	Royalty Received	Unit Rate depletion	Depletion allowed
Brown No. 1	42,595.00	2,129.78	3.1052¢.	1,322.66
Brown No. 2	72,719.	3,635.97	3.1052¢.	2,258.07
Snyder	482,510.	42,219.66	5.4342¢.	26,220.56
McEwen	40,000.	6,000.00	7.5905¢.	3,036.20
Fletcher	30,000	1,312.52	1.8942¢.	568.26
Hemmens	30,000	3,750.00	7.7631¢.	2,328.93
Judd	20,966	2,315.09	6.8574¢.	1,437.72
Billings	62,500	4,687.50	3.599¢.	2,249.38
Totals		66,050.52		39,421.78
Depletion claimed				29,135.66
Difference				10,286.12

EXHIBIT J

COMPUTATION OF PROFIT OR LOSS ON SALES OF REAL ESTATE 1924

	Year Acq.	Sale price	Cost or 3/1/13 value	Profit or (loss)	%	Collections	Taxable Income	1925 Collections	Taxable Income	1926 Collections	Taxable Income
Lots 1 to 8, incl. 10-11 B 9 and Lots 5 to 23 Inc. B 4 Woodland Park Prior 3/1/13	9	5,130.00	1,879.00	3,251.00		5,130.00	3,251.00				
Kinney Lots 6 Blk 7	Prior 3/1/13	70.91	123.00	(52.09)		70.91	(52.09)				
Lot 4, B. 11, Woodland Park	Prior 3/1/13	371.59	97.00	274.59		371.59	274.59				
Lots 15 - 16 Woodland Park	Prior 3/1/13	1,200.00	1,024.10	175.90		1,200.00	175.90				
Lot 14 B 2 Woodland Park	Prior 3/1/13	1,355.00	1,056.70	298.30	19.06%	300.00	57.18	1,055.00	201.12		
Lots 41, 43, 45 2nd Proper 1st Add	Prior 3/1/13	120,000.00	120, 324.46	(324.46)		120,000.00	(324.46)				
Timber permits	-	921.77	-	921.77		921.77	921.77				
R. O. Timbers Lease	-	55.00	-	55.00		55.00	55.00				
Grand Rapids Lots	Prior 3/1/13	195.00	80.00	115.00	74.2%	52.00	38.58	109.00	76.42		
" " "	" "	75.00	20.00	55.00	73.3%	[illegible].00	20.52				
40 acres 15-58-21 (Cost $2.05 per acre)	1921	600.00	82.00	518.00	86.3%	100.00	86.30	100.00	86.30	100.00	86.30
26 5 B 2 W. P. 2nd	Prior 3/1/13	525.00	90.00	435.00	82.86%	-	-	60.00	49.72	90.00	41.43
Lot 1, B 2 W. P. 2nd	" "	308.00	79.00	229.00		-	-	132.73	53.73		
Lot 2, B. 3 W. P. 2nd	" "	308.00	96.00	212.00		-	-	96.00	-	42.00	42.00
Kenney Lots 25 Blk 10	" "	41.67	45.45	(3.78)				41.67	(3.78)		
Grand Rapids Lots 1, 2 & 56	" "	55.00	12.50	42.50	77.3%	-	-	13.25	10.24		
Lot 7, Blk 48 Easton	" "	630.00	540.00	90.00	14.3%	-	-	80.00	11.44	190.00	27.17
Lot 1, 2, & 26, Page E. Dak.	" "	425.00	52.00	373.00	88.1%	-	-	50.00	44.05		
Lot 2, 31 - 52 - 17	" "	350.00	194.00	156.00	44.6%			75.00	33.45	75.00	33.45
Lot 8, B. 14, W. D. Lot	" "	390.00	302.66	87.34	13.5%			70.00	9.45	59.22	8.00
Timber Permits	-	589.02	-	589.02				589.02	58[illegible].02		
Lots 5-10 1st Page. E. Dak.	Prior 3/1/13	300.00	52.00	248.00	82.6					40.00	33.04
Lots 9-10 B. 11 Portland	" "	7,333.33	3,600.00	3,733.33						7,333.33	3733.33
Timber Permits	-	291.66	-	291.66						291.66	291.66
Scrap Iron	-	75.00	-	75.00						75.00	75.00
Hay		35.50	-	35.50						35.50	35.50
Wood		5.00		5.00						5.00	5.00
Miscellaneous		139.84	-	139.84						139.84	139.84
"	-	195.00	100.00	95.00		195.00	95.00				
Net taxable income							4,599.29		1,161.16		4,551.72

Note: Where 3/1/1913 value is used this value is based on the true and full assessed values as of that date in all cases where such value was greater than cost.

* Reported on deferred payment basis.

1-C C

70 Exhibit K

Computation of 3/1/1913 value of
Duluth Hotel Lots

Property sold 1924 consisted of

Lots 41, 43 and 45 E. Superior Street, Duluth Proper 1st Addition. (These lots include lots 10 to 16, inclusive, Block 6, Portland Division)

1913 True and full assessed value of above	$112,500.00
1913 " " " " " " Bldgs.	3,308.00
	115,808.00
Comparison of actual sales in 1913 in adjoining block shows that sale price in 1913 was 3.943% greater than true and full assessed value. Allowing 3.943% increase in true and full value (3.943% of 115,808.00) equals	4,566 31
Total 3/1/1913 value	120,374.31
Add—Subsequent improvements	4,030.65
Total 3/1/13 value and cost	124,404.96
Less—Depreciation sustained	4,080.50
Depreciated value date of sale 1924	120,324.46

Note: Original cost of above property in 1906-1907 was $63,943.72 and was sold in 1924 for $120,000.00.

71 Petitioner's Exhibit 2.

Partial Decree of Distribution

In Probate Court

State of Minnesota,
County of St. Louis

In the Matter of the Estate of Guilford G. Hartley, Decedent.

The petition for partial decree assigning the portion of property in the above entitled estate and for an order or decree confirming the setting aside of Liberty Bonds or other securities to provide for the annuities provided for in the will came on for hearing before the above named court on the 7th day of April, 1924, Messrs. Fryberger, Fulton, Hoshour & Ziesmer appearing as attorneys on behalf of said pe-

tition, there being no appearance in opposition thereto, the court after duly considering the petition and the files and records in said matter, and being duly advised in the premises finds the following facts:

First. That notice of said hearing has been duly given and served as required by law and the citations of the court for said hearing made and filed on the 8th day of April, 1924, and that said citation has been published as required by law in the Duluth News Tribune.

Second. That the said estate has been partially administered, as set forth in said petition, and the expenses of the administration to the date of said petition and the expenses of the last sickness and burial of said decedent and all of the debts of said decedent and claims against the estate
72 have been fully paid and satisfied, and the said representatives have filed a partial account herein of all matters up to January 1, 1924, which partial account has been settled on the 7th day of April, 1924.

Third. That the said decedent died testate on the 17th day of January, 1922, and at the time of his death was a resident of Duluth, in the County of St. Louis, State of Minnesota.

Fourth. That the portion of said estate of said decedent ready for distribution, as shown by said petition and at said hearing, is:

Stock in banks and other corporations, of the value of ....$ 573,160.55

Mortgages, bonds and other similar securities of the value of 1,143,186.63

Other personal property of the value of 16,310.69

Real Estate consisting of the Southeast quarter of the Northeast quarter of Section 21, Township 56, Range 24, Itasca County, Minnesota.

Fifth. That in addition to the special bequests of personal property provided for in said will and paid as appears from said petition for the allowance of the partial account, it is provided in said will and the codicils thereto attached that the said executors and trustees keep intact the following securities:

$13,000. 4¼% Second Liberty Loan

$23,700. 4¼% Third Liberty Loan

$34,200. 4¼% Fourth Liberty Loan

$83,100. 4¾% Victory Loan

for the payment of the following annuities: To pay to Wilder W. Hartley and Benjamin F. Hartley, brothers of the deceased, and to Mary Rogers, sister of the deceased,
73 the sum of one hundred dollars per month during the term of their lives; and to Mrs. Delia Woodward the sum of fifty dollars per month for the term of her life; and a further annuity of one hundred dollars per year to William Smith during his life, and upon the death of said beneficiaries said fund to be divided among the children of said deceased in the same manner as the rest of the estate (the issue of parents to take the parent's share).

That it is further provided in and by the terms of said will that as said persons receiving said annuities die, enough of said bonds to pay the remaining annuities should be held and the balance turned in to the general estate of the deceased for division, and it appearing that said Delia Woodward predeceased said testator, and it further appearing that Benjamin F. Hartley, another of said annuitants, has died since the decease of said testator, and it further appearing to the court that fifty-eight thousand eight hundred fifty dollars par value of said bonds will furnish sufficient income to pay the remaining annuities and that the balance of said bonds shall be turned back into the general estate of the deceased for division;

Now Therefore, the action of said executors and trustees in holding intact said bonds of the par value of fifty-eight thousand eight hundred fifty dollars, as provided for in said will and the codicils thereto, and as found by the court herein to be sufficient to pay the remainder of said annuities, be and the same is hereby in all things confirmed, and adjudged and decreed to be in accordance with the terms of said will, and said executors and trustees under said will are ordered, adjudged and decreed to reinvest said bonds when the same become due in other bonds of the United States of America.

74 That it is further provided in and by the terms of said will and the codicils thereto attached that said executors shall set aside a fund sufficient to assure an income of fifteen thousand dollars per year to Carrie E. Hartley, the wife of said deceased, and the income from which shall be paid semi-annually to said Carrie E. Hartley for the maintenance of her home and household, and of which she need

give no account, and it is further adjudged and decreed that the setting aside of said fund in the form of

$286,750.00 4¼% Fourth Liberty Loan Bonds
56,500.00 Northern Pacific Fours
18,500.00 Northern Pacific Threes

as heretofore carried out by said executors, is in accordance with the terms of said will, and it is in all things confirmed, and the payment of said income from said property to said Carrie E. Hartley by said executors for the maintenance of said widow is hereby confirmed and adjudged and decreed to be in accordance with the terms of said will.

That it is further provided by the terms of said will and the codicils thereto attached that said Carrie E. Hartley, wife of said deceased, shall have the homestead during the term of her life, and it is hereby ordered, adjudged and decreed that the homestead of the deceased, situated in the County of St. Louis and State of Minnesota, and described as follows, to-wit:

Lots 1, 2, 3, and 4, in Block 12, and Lots 1, 2, 3 and 4, in Block 14, Banning & Ray's Sub-Division of Duluth,

be adjudged and decreed in Carrie E. Hartley, wife of said deceased, during the term of her natural life, with remainder over to Cavour Hartley, Jessie H. Congdon, Irma H. Claypool, Judith H. Lewis and Guilford Hartley.

The court further finds that it is further provided in
75 and by the terms of said will that the residue and remainder of said estate after the bequests of the furniture, horses, vehicles and the personal property used in connection with the home and office furniture, wearing apparel and jewelry, shall be decreed to the surviving wife, Carrie E. Hartley, and children, Cavour Hartley, Jessie H. Congdon, Irma H. Claypool and Judith H. Lewis, and to the remaining minor child, Guilford Hartley, as soon as he becomes the age of twenty-one years, and to their successors, upon the trusts specified in said will and codicils thereto, to-wit: To pay one-sixth of said entire residue and remainder to Carrie E. Hartley, surviving widow of said deceased, and pursuant to said provision of said will, it is ordered, adjudged and decreed that title to one-sixth of said property set forth in Exhibit A, hereto attached, be and the same is vested in said Carrie E. Hartley, and that an additional amount equal to one-fifth of all property set aside to pay annuities and for specific legacies and bequests, to-wit:

$69,120.00 4¼ Fourth Liberty Loan Bonds
11,500.00 Northern Pacific Fours
3,500.00 Northern Pacific Threes

be adjudged and decreed to be in said Carrie E. Hartley in fee simple, free from said trust.

The court further finds that as provided by said will that the remaining estate, after said special bequests and legacies and said annuities and said bequest to said surviving widow, Carrie E. Hartley, is devised and bequeathed to said Cavour Hartley, Jessie H. Congdon, Irma H. Claypool and Judith H. Lewis, in trust to pay over so much of the annual income to each of said children as may be necessary for the sup-
76 port and education of said children until they reach the age of twenty-one years, and to pay over the entire net annual income to each of said children until they reach the age of twenty-five years, and at the age of twenty-five years to pay over one-half of each child's share to it absolutely, and on reaching the age of thirty years, to turn over the remaining half to each of said children respectively, and as finally divided and disposed of that the trust created shall be terminated and fulfilled as to said property, and for the purpose of said payments and said division and distribution that said remaining estate should be divided into as many shares as said deceased had children, with an additional one-half share to said son Cavour Hartley, and making five and one-half shares.

The court further finds that all of said children are past thirty years of age except Guilford Hartley, who is a minor;

Now, pursuant to said provision of said will, it is ordered, adjudged and decreed that the title to an undivided two-elevenths of said remaining personal estate is vested in each of the following of said children, to-wit: Jessie H. Congdon, Irma H. Claypool and Judith H. Lewis; that an undivided three-elevenths of said estate is vested in Cavour Hartley, all of said shares to be in fee simple, and free from said trusts, and that the remaining two-elevenths is vested in said trustees, in trust to pay over such portion of the income thereof as may be necessary for the support and education of said Guilford Hartley until he shall attain the age of twenty-one years, at which time the entire net annual income shall be paid to him until he reaches the age of twenty-five years, at which time an undivided one-half thereof shall be

vested in him absolutely until he shall reach the age
77 of thirty years, at which time said remaining half of said distributive share shall be vested in him and said trust thereupon terminated as to said property.

That the real estate of said deceased ready for distribution consists of the following described property situate in the County of Itasca, State of Minnesota, to-wit: Southeast Quarter of the Northeast Quarter (SE¼ of NE¼), Section Twenty-one (21), Township fifty-six (56), Range twenty-four (24) West, and that the following named persons are the persons entitled to said real estate under the terms of said will, to-wit: Carrie E. Hartley, Cavour Hartley, Jessie H. Congdon, Irma H. Claypool, Judith H. Lewis and Guilford Hartley.

Now, Therefore, On motion of the attorneys for the representative of said estate, and by virtue of the power and authority vested in this court by law, It Is Hereby Ordered, Adjudged And Decreed, and the said court does hereby Order, Adjudge And Decree, that all and singular the above described real property be, and the same hereby is, assigned to and vested in the above named persons in the following proportions and estates, to-wit:

Carrie E. Hartley,.....an undivided 1/6 thereof
Cavour Hartley, ...an undivided 15/66 thereof
Jessie H. Congdon,.....an undivided 10/66 thereof
Irma H. Claypool,.....an undivided 10/66 thereof
Judith H. Lewis,.....an undivided 10/66 thereof

And the remaining undivided 10/66 thereof be, and the same hereby is, assigned to and vested in said trustees in trust to pay over such portion of the income thereof as may be necessary for the support and education of said Guilford Hartley until he shall attain the age of twenty-one years, at which time the entire net annual income shall be paid to him until he reaches the age of twenty-five years, at which time an undivided one-half thereof shall be vested in him
78 absolutely until he shall reach the age of thirty years, at which time said remaining half of said interest shall be vested in him absolutely and said trust thereupon shall be terminated as to said property.

To Have And To Hold The Same, together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining, to the said above named persons, their heirs and assigns; without prejudice, however, to any lawful

conveyance of said property or any part thereof by said persons made.

Witness, The Honorable S. W. Gilpin, Judge of said court, and the seal of said court, this 24th day of February, 1925.

S. W. GILPIN,
Judge of Probate.

Seal
Probate Court
St. Louis County, Minn.

EXHIBIT A
G. G. Hartley Estate

Residue of Stock in banks and other corporations
December 31, 1925.

		Shares	Amount
Algoma Mining Company		20	450.00
American Investment Corporation		175	7151.25
Duluth Iron & Steel Co. full paid		698	61240.00
[illegible] Company		5	1200.00
First National Bank, Ampbell		60	8851.80
First National Bank, Calcraine		45	15820.00
~~First National Bank, Elgin~~		~~--~~	~~--~~
Central West Bank, Duluth		10	1570.00
City National Bank, Duluth		10	2017.50
First National Bank, Nashwauk		15	5698.25
Canisteo Mining Company		96	2162.00
Cass Water Light & Power Co.		5	4250.00
Cass Land Co.		4	
Calumet & Hecla Copp Consolidated Copper Co.		316.6	5350.00
Duluth-Superior Traction Co.	Cm.	81	612.00
	Pd.	88	550.00
Diamond Iron Company		2	650.00
Greenwood Company	Cm.	170	.....
	Pfd.	186	.....
Grand Rapids Exploration Co.		270	10750.50
Great Northern Railway Co.		888	28478.70
Hanna Mining Company		2	....
Iceland Copper Co.		855	....
Jellison Farm Creamery Co.		79	....
[illegible] Mining Co.		2673	26517.50
Judson Land Co.		2501	12500.00
Minnesota National Bank		100	12500.00
(2) American Fruit Growers Association	units	556	22157.50

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[illegible]			1/8th interest	.....
[illegible] Copper Co. ($20 paid in)			24884	12187.50
Lone Iron Co.			1282½	600.00
Marshall Wells Co.		Cm	525	52686.00
		Pfd.	500	50000.00
Mirimichi Co.			650	....
Matapedia Co.			21 1/4	---
Meaabe Improvement Co.			1	....
Minneapolis, St.Paul & S.S.M.Ry.			528	52862.80
Graham Iron Co.			75	....
Nevada Mining Co.			12621	15625.00
Nevada Land Co.			6312½	44968.75
News Tribune Co.			20	1850.00
Nachusa Co.			2	50.00
Northern Drug Co.		Cm	50	5000.00
		Pfd.	50	....
Northern Pacific Railway Co.			528	40856.70
Northern Packing Company	50 Pfd. 100 Cm.		150	2100.00
Onondaga Iron Co.			250	20250.00
Park State Bank			20	1500.00
Park Point Land Co.			90.16	13822.50
Potato Growers Association at Parker Co.		Cm	232	23200.00
		Pfd.	250	21875.00
Reien Exploration Co.			4	1754.00
Seneca Copper Co.			180	3600.00
St.Mary's Parish Land Co.			30	2461.56
Ski Hill Co.			12	161.60
The Shoguaco Co.			30	....
Two Harbors Mere. Co.			250	....
The Tobique Land Company			4	....
Zenith Furnace Co.			93	8777.34
		TOTAL		573160.56

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Chas Water Light		17500.00
D. & I. R. 1st [illegible]		12544.24
Duluth Curling Club 2nd 6%		1500.00
Itasca County Trunk [illegible]		26000.00
Itasca County [illegible]		10000.00
Jap 4's, 1925	2 500	2154.98
Jap 4's, 1925	11900	6824.09
Kitchi Gummi 1st Gold 5's	14000.00	11200.00
Kitchi Gummi 2nd Gold 5's	1000.00	600.00
Kitchi Gummi 2nd Gold 5's	500.00	300.00
Minnesota Pike Relief 4 1/2's	50000.00	[illegible]
Russian Republic Notes, [illegible]	65000.00	. . ....
Russian Republic Notes, [illegible]	5000.00	. . . . .
Russian Three Year [illegible]	12000.00	1800.00
St. Paul Union [illegible] Mortgage, [illegible]	10000.00	9450.00
St. Louis Co. Bonds 5's	[illegible]	26840.53
1st Liberty 3 1/2's	[illegible]	1194.32
1st Liberty [illegible]	[illegible]	28000.00
1st 2nd 4 [illegible]	[illegible]	[illegible]
2nd [illegible]	[illegible]	[illegible]
3d 4 1/4's	[illegible]	[illegible]

[redacted]

(Continued)

		Par	
4th 4 1/4's	Registered Coupon	100000.00) 58000.00)	155046.09
4th 4 1/4's	Registered Coupon	50000.00) 115000.00)	162926.71
4th 4 1/4's	Registered	20000.00	19536.00
4th 4 1/4's	Coupon	155500.00	155349.21
Plus interest accrued at time of purchase			281.62
U.S.Treasury 4 1/4% Notes of 1926		80000.00	80112.00
U.S.Treasury 4 1/2's		40000.00	40155.00
Plus interest accrued at time of purchase			300.00
U.S.Treasury 4 1/4% notes due 10/15/52		5000.00	5000.00
U.S. 4 1/8% Treas ry Notes		10000.00	10000.00
Plus interest accrued at time of purchase			243.43
Interest accrued on 4% Treasury Notes at time of purchase, notes since sold			1481.37
			$926363.80

~~Of the above on this sheet~~

~~DO SOS DISBURSES 150,000 par 4th 4 1/4's registered~~
~~DO SOS DISBURSES 205,500 par 4th 4 1/4's coupon~~

S. S. Hartley Estate
Residue of Book Accounts
At End of September 31, 1925.

Due Estate

The Gregory Company		10604.35
Judith Lewis		400.00
Estate paid taxes for purchasers of Home Acres Farms		526.88
Leon R. Inn	54.25	57.25
Guilford Hartley		1158.72
Wm. A. Greer		300.00
Leon Iron Co.		.82
Cass Land Company		14016.60
Forest Reserve Scrip		100.00
Hartley Stock Farm		2312.24
Beelye		1686.21
Fred R. Green		22499.15
Park Point Land Co.		5287.10
Reien Exploration Co.		1500.95
Mrs. L. C. Rogers		68.05
Tobique Land Co.		32945.02
J. B. Benson, taxes on Page lots sold to him		6.05
		93449.38

Liability

Millie Bunnell	8.50	
Cornwall Investment Co.	134.00	
Carrie E. Hartley	344.45	
Onondaga Iron Co.	13433.20	
This company to be charged with $22157.55, for American Fruit Growers Assn. Stock turned over to them.		
Edmund Iron Co.	1050.00	
Wisdom Lot Account	4609.09	19579.24
		73870.14

Items in suspense 649.76

$73220.38

G. K. Hartley Estate

Notes Receivable

At the close of the day

December 31, 1923.

	Principal	Interest
A. D. Passard et al	2000.00	73.32
D. M. Gunn	4000.00	
Wm. Mason	1500.00	
John Valin	57.18	
D. A. Gunn	5000.00	
Ned A. Merriam	310.00	
Andrew Kemicki	777.61	
Ralph Nelson	1873.47	145.20
Waldon V. Anderson	592.44	89.27
E. B. Swanson	277.00	
Ernest R. Lade	2000.00	
Northland Country Club	75000.00	
Ernest Svend Von Mehren	153.58	
Paul Von Mehren	655.37	
Jordan Nelson	1000.00	
James A. Ferguson	6950.00	
Two Harbors Mercantile Co.	10826.15	
Island Farm Creamery Co.	11816.85	
	[illegible].45	149.45
Grand total		[illegible].22

Filed February 24, 1925, and recorded in Book 10 of Final Decree Record on page 112.
Delia Chevrette
Deputy Clerk of Probate.

85 No. 29904

In Probate Court.

State of Minnesota,
County of St. Louis—ss.

I, Sheldon Watts, Clerk of the Probate Court within and for said County of St. Louis, do hereby certify that I have compared the foregoing copy of the record of the Partial Decree of Distribution, in the matter of the estate of Guilford G. Hartley, decedent, with the original records thereof now remaining in this office and have found the same to be correct transcript therefrom and of the whole of such original records. And I further certify that said exemplification would be received in evidence in all the courts of the State of Minnesota.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Duluth, this 3rd day of January, A. D. 1934.

SHELDON WATTS,
Clerk of Probate Court.

Seal
Probate Court
St. Louis County, Minn.

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86 (Praecipe for Transcript on Appeal of Cavour Hartley, Executor, etc.)

Filed January 12, 1934, United States Board of Tax Appeals.

To the Clerk of the United States Board of Tax Appeals:

You are hereby requested to prepare and certify and transmit to the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, with reference to the petition for review heretofore filed by the petitioner in the above cause, a transcript of the record in the above cause, prepared and transmitted as required by law and by the rules of said Court, and to include in said transcript of record the following documents or certified copies thereof:

1. The docket entries of proceedings before the United States Board of Tax Appeals in the above entitled cause.
2. Pleadings before the Board.
   (a) Petition, including annexed copy of deficiency letter and attached statements.
   (b) Answer.

3. Findings of fact, opinion and decision of the Board.

4. Petition for review by Cavour Hartley, Executor together with proof of service of notice of filing petition for review and of service of a copy of petition for review.

5. Statement of the evidence, including petitioner's (Exhibits 1 and 2). As Settled and Allowed.

6. Orders enlarging time for the preparation of the evidence and for the transmission and delivery of the record.

7. This praecipe.

H. C. FULTON,
H. B. FRYBERGER,
EDWARD L. BOYLE,
WILLIAM B. FRYBERGER,
Attorneys for Petitioners.

Service of a copy of the within praecipe is hereby admitted this 22nd day of November, 1933.

E. BARRETT PRETTYMAN,
General Counsel, Bureau of Internal Revenue, Attorney for Respondent.

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87 (Clerk's Certificate to Proceedings on Appeal of Cavour Hartley, Executor, etc.)

United States Board of Tax Appeals
Washington

Cavour Hartley, Executor, Estate of G. G. Hartley, Petitioner,
Docket No. 42343 vs.
Commissioner of Internal Revenue, Respondent.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 86, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal as above numbered and entitled.

Seal
U. S. Board of
Tax Appeals
1924.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 25th day of January, 1934.

B. D. GAMBLE,
Clerk, United States Board of Tax Appeals.

No 9946. Filed Feb. 12, 1934, E. E. Koch, Clerk.

* * * * * *

26 (Petition of Commissioner of Internal Revenue for Review of Decision of United States Board of Tax Appeals.)

Filed August 29, 1933, United States Board of Tax Appeals.

In the United States Circuit Court of Appeals for the Eighth Circuit

Guy T. Helvering, Commissioner of Internal Revenue Petitioner,

(B. T. A. No. 42343.) vs.

Cavour Hartley, Executor of the Estate of G. G. Hartley, Respondent.

To the Honorable Judges of the United States Circuit Court of Appeals for the Eighth Circuit:

Now comes Guy T. Helvering, Commissioner of Internal Revenue, by his attorney, Pat Malloy, Assistant Attorney General, E. Barrett Prettyman, General Counsel, Bureau of Internal Revenue, and Brooks Fullerton, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I.

That he is the duly appointed, qualified, and acting Commissioner of Internal Revenue, appointed and holding his office by virtue of the laws of the United States; that the respondent herein, Cavour Hartley, is the duly appointed, qualified and acting executor of the estate of G. G. Hartley, deceased, and is a resident and inhabitant of the City of Duluth in the State of Minnesota, and filed a Federal income tax return for the calendar year 1924, as such executor, with the Collector of Internal Revenue for the District of Minnesota,

whose office is located at St. Paul, Minnesota, which is
27 within the jurisdiction of the United States Circuit Court of Appeals for the Eighth Circuit.

II.

The nature of the controversy is as follows, to-wit:

The respondent is executor of the estate of G. G. Hartley, who died January 11, 1922, leaving sundry real, personal and mixed properties valued at approximately $3,000,000, producing an annual gross income of something like $200,000. Included therein were some fifteen iron mines operated under royalty leases and several thousand pieces of real estate consisting of farms and improved rental city properties. The personal property comprised a miscellaneous quantity of investment and income securities. In the conduct of his business the decedent maintained a considerable office organization which was supervised by a general office manager who employed assistants, bookkeepers, stenographers, and an engineer who had supervision over collection of royalties on the iron mines. During the years 1922 to 1928 the executor was engaged in (a) administering decedent's estate, and (b) in continuing to carry on the business previously conducted by decedent.

None of the assets of the estate were distributed until February 24, 1925, when there was a partial distribution under order of the probate court. The partial distribution included property worth approximately $2,000,000.

After assuming control of the estate, the executor maintained intact the organization built up by the decedent and continued to carry on the business in the same manner in which it had been theretofore conducted. After the distribution set out above such office organization managed and conducted the distributed properties as if they were still included in the estate.

28 In respondent's tax return for the calendar year 1924 the executor claimed certain deductions from the gross income of the estate for (1) salaries for the office manager and his staff in the sum of $23,535.13. (2) expenses, in the amount of $2,633.60, and (3) accountant's fees in the amount of $2,000.00.

In the audit of respondent's income tax return for the year 1924 the Commissioner allocated a portion of each of said three items, $7,192.57, $1,316.80 and $1,400.21, respectively, to the expense of administering the estate and the remainder of said items to the expense of carrying on the business.

The Commissioner disallowed as a deduction from gross income those portions of said three items allocated to the expense of administering the estate. Said disallowance was in accordance with Regulations 69, Article 292, O. D. 357, C. B. 2, page 175, and Estate of Given vs. Lewellyn, Collector, 38 Fed. (2d) 477.

From the deficiency notice for the calendar year 1924 respondent appealed to the Board of Tax Appeals, contending, in respect of these three items, that the whole amount of each item was an expense of carrying on business, but introduced no evidence to prove (a) that the respondent, as executor, "carried on business" as distinguished from the care of decedent's property and the collection of income therefrom, or to prove (b) what portion of said three items were incurred (1) as expenses of administration and (2) what portion as expenses of carrying on business, thus failing to sustain the burden of proof or to overcome the prima facie correctness of the Commissioner's determination. The Board of Tax Appeals, as to said three items, reversed the determina-
29 tion of the Commissioner and allowed the full amount of said items as deductions from respondent's income for 1924, and by such action reduced the tax as determined by the Commissioner for the year 1924 from $3,261.02 to $1,745.47.

The Board's finding and opinion were promulgated March 16, 1933, and the order of redetermination was entered on June 3, 1933.

III.

1. The Board erred in finding "that the respondent (petitioner on review herein) disallowed parts of the deductions on account of salaries and expenses on the theory that the rejected amounts fairly represent the ratable parts of such charges which should be allocated to the management of portions of the estate distributed to the heirs of the decedent and also that some part of such charges was for the management of the 'Hartley Family' account."

2. The Board erred in reversing the determination of the Commissioner wherein he allocated certain portions of said three disputed items to the expense of administering the estate and disallowed said portions as deductions from the income of respondent for the calendar year 1924.

3. The Board erred in failing to affirm the Commissioner's determination in disallowing said portions of said items.

4. The Board erred in failing to find that the respondent had failed to sustain the burden of proving that said allocation and disallowance by the Commissioner was incorrect.

5. The Board erred in failing to find that the respondent had failed to introduce any evidence to prove that said allocation by the Commissioner was incorrect.

30 6. The Board erred in failing to find that the respondent failed to introduce any evidence upon which the Board could allocate said three items between the expense of administering the estate and the expense of carrying on business.

7. The Board erred in respect of said three items in that the evidence does not sustain the findings.

8. The Board erred in respect of said three items in that the findings are insufficient to sustain the Board's conclusion that all of said three items of salaries, expenses and accountant's fees were expenses of carrying on a business.

9. The Board erred in failing to find that some parts of said three items were incurred in administering said estate, and that no evidence was adduced by the respondent upon which the Board could allocate such expenses between those incurred in administering said estate and those incurred in carrying on a business.

Wherefore, the Commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Eighth Circuit, that a transcript of the record be prepared in accordance with law and with the rules of said court and transmitted to the clerk of said court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said court.

(Signed) PAT MALLOY,
Assistant Attorney General.

(Signed) E. BARRETT PRETTYMAN,
General Counsel, Bureau of Internal Revenue.

Of Counsel:
Special Attorney,
Bureau of Internal Revenue.

31 United States of America,
District of Columbia—ss.

Brooks Fullerton, being duly sworn, says that he is a Special Attorney in the Office of the General Counsel of the

Bureau of Internal Revenue and as such is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his own knowledge except as to the matters therein alleged on information and belief, and as to those matters he believes it to be true.

(Sgd) BROOKS FULLERTON.

Sworn and subscribed to before me this 29 day of August, 1933.

(Sgd) GEORGE W. KREIS,
Notary Public.

My commission expires Nov. 16, 1937.

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32 (Notice of Filing of Petition for Review by Commissioner of Internal Revenue and Acknowledgment of Service.)

(Filed September 7, 1933, United States Board of Tax Appeals.)

To: H. B. Fryberger, Esq., 712-719 Lonsdale Building, Duluth, Minnesota:

You are hereby notified that the Commissioner of Internal Revenue did, on the 29th day of August, 1933, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Eighth Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 29th day of August, 1933.

(Signed) E. BARRETT PRETTYMAN,
General Counsel, Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 1 day of Sept., 1933.

.....
Respondent on Review.

H. B. FRYBERGER,
Attorney for respondent on review.

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41 (Praecipe for Transcript on Appeal by Commissioner of Internal Revenue.)

Filed January 20, 1934, United States Board of Tax Appeals.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Eighth Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the Board.

2. Pleadings before the Board.

(a) Petition, including annexed copy of deficiency letter and attached statements.

(b) Answer.

3. Findings of fact, opinion and decision of the Board.

4. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.

5. Statement of the evidence as settled and allowed.

6. Orders enlarging time for the preparation of the evidence and for the transmission and delivery of the record not included in transcript.

7. This praecipe.

(Signed) E. BARRETT PRETTYMAN,
General Counsel, Bureau of Internal Revenue.

Service of a copy of the within praecipe is hereby admitted this 15 day of Jan., 1933, and hereby agreed to.

FRYBERGER, FULTON & BOYLE
Attorneys for Respondent.

42 (Clerk's Certificate to Proceedings on Appeal of Commissioner of Internal Revenue.)

United States Board of Tax Appeals
Washington

Commissioner of Internal Revenue, Petitioner,
Docket No. 42343 vs.
Cavour Hartley, Executor, Estate of G. G. Hartley, Respondent.

I, B. D. Gamble, clerk of the U S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 41, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal as above numbered and entitled.

Seal
U. S. Board of
Tax Appeals
1924.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 29th day of January, 1934.

B. D. GAMBLE,
Clerk, United States Board of Tax Appeals.

No. 9943. Filed Feb. 7, 1934, E. E. Koch, Clerk.

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1 (Motion to Consolidate Cases and That One Record be Printed.)

United States Circuit Court of Appeals for the Eighth Circuit.

Cavour Hartley, Executor, Estate of G. G. Hartley, Petitioner,
No. 9946 vs.
Guy T. Helvering, Commissioner of Internal Revenue, Respondent.

Guy T. Helvering, Commissioner of Internal Revenue, Petitioner,
No. 9943 vs.
Cavour Hartley, Executor, Estate of G. G. Hartley, Respondent.

Comes now the parties hereto by their respective attorneys of record and move that the above-entitled proceedings be

consolidated for hearing and decision; that but one record shall be printed for both proceedings, and that from such consolidated record, duplications may be deleted.

FRYBERGER, FULTON & BOYLE,
Counsel for Cavour Hartley, Executor.

SEWALL KEY,
Special Assistant to Attorney General,
Counsel for Guy T. Helvering, Commissioner of Internal Revenue.

Endorsed: Motion to Consolidate Filed in U. S. Circuit Court of Appeals on Feb. 12, 1934, E. E. Koch, Clerk.

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2 (Stipulation to Consolidate and as to Printing of Record.)

United States Circuit Court of Appeals for the Eighth Circuit.

Cavour Hartley, Executor, Estate of G. G. Hartley, Petitioner.

No. 9946. vs.

Guy T. Helvering, Commissioner of Internal Revenue, Respondent.

Guy T. Helvering, Commissioner of Internal Revenue, Petitioner,

No. 9943. vs.

Cavour Hartley, Executor, Estate of G. G. Hartley, Respondent.

It is hereby stipulated between the parties hereto by their respective attorneys of record, subject to the approval of the Court:

That the above-entitled causes be consolidated for hearing and decision:

That but one record shall be printed herein on review of both the above-entitled causes, and said records shall consist of the follow[illegible]:

1. Docket entries of the proceedings before the Board.
2. Pleadings before the Board.
   (a) Petition, including annexed copy of deficiency letter and attached statements.
   (b) Answer.
3. Findings of fact, opinion and decision of the Board.

4. Petition for review by Cavour Hartley, Executor, together with proof of service of notice of filing petition for review and of service of a copy of petition for review

5. Cross petition for review by Commissioner of Internal Revenue, together with proof of service of notice of filing cross petition for review and of service of a copy of cross petition for review.

6. Statement of evidence in appeal of Hartley vs. Helvering as settled and allowed, including exhibits 1 and 2 attached thereto.

7. Orders enlarging time for the preparation of the evidence and for the transmission and delivery of the record.

8. Praecipe for record by Cavour Hartley, Executor.

9. Praecipe for record by Commissioner.

That the expense of printing said records shall be divided as follows:

The full cost of printing exhibits 1 and 2 shall be borne by Cavour Hartley, Executor, and the remainder of the cost of printing said record shall be equally divided between the parties hereto.

FRYBERGER, FULTON & BOYLE,
Counsel for Cavour Hartley, Executor.

SEWALL KEY,
Special Assistant to Attorney General,
Counsel for Guy T. Helvering, Commissioner of Internal Revenue.

(Endorsed): Filed in U. S. Circuit Court of Appeals on Feb. 12, 1934, E. E. Koch, Clerk.

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3 (Order Consolidating Cases for Hearing and Decision, and for Printing of Record.)

United States Circuit Court of Appeals, Eighth Circuit.

November Term, 1933.

Friday, February 16, 1934.

Cavour Hartley, Executor of the Estate of G. G. Hartley,
Petitioner,
No. 9946. vs.
Commissioner of Internal Revenue.

On Petition to Review Decision of United States Board of Tax Appeals.

and

Commissioner of Internal Revenue, Petitioner,
No. 9943. vs.
Cavour Hartley, Executor of the Estate of G. G. Hartley.

On Petition to Review Decision of United States Board of Tax Appeals.

Upon the joint motion and the stipulation of counsel, filed in these causes, It is ordered by this Court that these causes be, and they are hereby, consolidated for hearing and decision in this Court, that but one record shall be printed on the review of these causes to consist of the matters called for in the said stipulation, and that the expense of printing shall be divided as stipulated, the cost of printing Exhibits 1 and 2 to be borne by Cavour Hartley, Executor, etc., and the remainder of the cost of printing the record to be equally divided between the parties.

February 16, 1934.

109 And thereafter the following proceedings were had in said causes in the Circuit Court of Appeals, viz.:

(Appearance of Mr. Frank J. Wideman and Mr. Sewall Key as Counsel for Petitioner in Cause No. 9943.)

United States Circuit Court of Appeals, Eighth Circuit.

Commissioner of Internal Revenue, Petitioner,
No. 9943. vs.
Cavour Hartley, Executor, etc.

The Clerk will enter my appearance as Counsel for the Petitioner.

FRANK J. WIDEMAN,
SEWALL KEY,
Washington, D. C.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Feb. 12, 1934.

(Appearance of Mr. E. Barrett Prettyman and Mr. James K. Polk, Jr., as Counsel for Petitioner in Cause No. 9943.)

The Clerk will enter our appearances as Counsel for the Petitioner.

E. BARRETT PRETTYMAN,
General Counsel,
Bureau of Internal Revenue.

JAMES K. POLK, JR.,
Special Attorney,
Bureau of Internal Revenue.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Feb. 19, 1934.

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110 (Appearance of Counsel for Respondent in Cause No. 9943.)

The Clerk will enter my appearance as Counsel for the Respondent.

H. B. FRYBERGER,
H. C. FULTON,
EDWARD L. BOYLE,
WILLIAM B. FRYBERGER,
712 Lonsdale Bldg., Duluth, Minn.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Feb. 12, 1934.

(Appearance of Counsel for Petitioner in Cause No. 9946.)

United States Circuit Court of Appeals, Eighth Circuit.

Cavour Hartley, Executor, etc., Petitioner,
No. 9946. vs.
Commissioner of Internal Revenue.

The Clerk will enter my appearance as Counsel for the Petitioner.

H. B. FRYBERGER,
H. C. FULTON,
EDWARD L. BOYLE,
WILLIAM B. FRYBERGER,
712 Lonsdale Bldg., Duluth, Minn.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Feb. 12, 1934.

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111 (Appearance of Mr. Frank J. Wideman and Mr. Sewall Key as Counsel for Respondent in Cause No. 9946.)

The Clerk will enter my appearance as Counsel for the Respondent.

FRANK J. WIDEMAN,
SEWALL KEY,
Washington, D. C.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Feb. 12, 1934.

(Appearance of Mr. E. Barrett Prettyman and Mr. James K. Polk, Jr., as Counsel for Respondent in Cause No. 9946.)

The Clerk will enter our appearances as Counsel for the Respondent.

E. BARRETT PRETTYMAN,
General Counsel,
Bureau of Internal Revenue.

JAMES K. POLK, JR.,
Special Attorney,
Bureau of Internal Revenue.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Feb. 19, 1934.

(Appearance of Counsel for Amici Curiae in Cause No. 9946.)

The Clerk will enter my appearance as Counsel Amici Curiae.

J. M. RICHARDSON LYETH,
BEN R. CLARK,
2 Wall St., New York, N. Y.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Jun. 6, 1934.

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112 (Appearance of Mr. John MacC. Hudson as Counsel for Commissioner of Internal Revenue in Causes Nos. 9946 and 9943.)

United States Circuit Court of Appeals,
For the Eighth Circuit.

Case Nos. 9946 and 9943.

Cavour Hartley, Exr.,
vs.
Commissioner of Internal Revenue.

Commissioner of Internal Revenue,
vs.
Cavour Hartley, Exr.

The Clerk will enter our appearances as Counsel for the Commissioner.

JOHN MacC. HUDSON,
Special Assistant to the Attorney General.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 10, 1934.

(Order of Submission in Causes Nos. 9946 and 9943.)

May Term, 1934.

Thursday, May 31, 1934.

These causes, Nos. 9946 and 9943, were called for hearing in their regular order and receipt of Brief of J. M. Richardson Lyeth and Ben R. Clark, as amici curiae, Counsel for Frederick P. Burrall, et al., as Executors of the last Will and Testament of John M. Longyear, deceased, with motion for leave to file same made a part thereof, was brought to the Court's attention and counsel for respective parties con-

senting, leave by the Court was granted to file same. Argument was then commenced by Mr. H. C. Fulton, counsel for Hartley, Executor, etc., continued by Mr. William B. Fryberger, counsel for same party, by Mr. John MacC. Hudson, Special Assistant to the Attorney General, for the Commissioner of Internal Revenue, and concluded by Mr. H. C. Fulton, counsel for Hartley, Executor, etc.

Thereupon, these causes were submitted to the Court on the transcript of the record from said Board of Tax Appeals and the briefs of counsel filed herein.

(Opinion in Causes Nos. 9946 and 9943.)

United States Circuit Court of Appeals,
Eighth Circuit.

No. 9946.—MAY TERM, A. D. 1934.

Cavour Hartley, Executor of the Estate of G. G. Hartley, Petitioner, vs. Commissioner of Internal Revenue, Respondent.	On Petition to Review Decision of United States Board of Tax Appeals.

No. 9943.—MAY TERM, A. D. 1934.

Commissioner of Internal Revenue, Petitioner, vs. Cavour Hartley, Executor of the Estate of G. G. Hartley, Respondent.	On Petition to Review Decision of United States Board of Tax Appeals.

[July 6, 1934.]

Mr. H. C. Fulton and Mr. William B. Fryberger (Messrs. Fryberger, Fulton & Boyle were with them on the brief), for Cavour Hartley, Executor.

Mr. John MacC. Hudson, Special Assistant to the Attorney General (Mr. Frank J. Wideman, Assistant Attorney General, and Mr. Sewall Key, Special Assistant to the Attorney General, were with him on the brief), for Commissioner of Internal Revenue.

Mr. J. M. Richardson Lyeth and Mr. Ben R. Clark filed brief as amici curiae.

Before STONE and GARDNER, Circuit Judges, and JOYCE, District Judge.

STONE, Circuit Judge, delivered the opinion of the court.

These are cross appeals from an order of the Board of Tax Appeals which affirmed in part and reversed in part a redetermination (November 22, 1928) by the Commissioner of income taxes due, for the taxable years 1924 and 1925, from the executor of the estate of G. G. Hartley, who died January 11, 1922, possessed of real, personal and mixed property of approximately $3,000,000.

The appeal (No. 9946) of the executor involves three claimed errors as follows:

I. Use of the value of the estate property at the date of death of Hartley instead of value at time of acquisition of property by him as the basis of computing for the above tax years the gain or loss on property sold in those years and the allowance of depreciation or depletion of such properties;

II. Rejection in whole or part of certain salary and expense items claimed as deductions;

III. Rejection of deductions, claimed on account of alleged net loss for the tax year 1923, carried forward into 1924 and 1925.

The appeal of the Commissioner (No. 9943) involves a claimed error in holding that the full amount of salaries and expenses paid in the tax year 1924 was proper deductible expense, thereby rejecting the determination of the Commissioner that a portion thereof should be disallowed as incurred for purposes other than the business of the estate.

I.

BASIS OF VALUATION.

This point is whether in estimating property gains and losses from sales of property ar depletion or depreciation of such properties the basic value is that of acquisition cost to the testator or of value at death of the testator. This question is presented without dispute as to facts and is, therefore, purely a question of law. The applicable law is to be found in the Acts of Congress, Departmental Regulations in accordance with such Acts and judicial decisions construing such Acts and such Regulations.

These returns were made under and these taxes are governed by the Revenue Acts of 1921 (42 Stat. 227) and 1924 (43 Stat. 253). Neither of these Acts contains any separate provision expressly defining this basis as applied to income of estates of deceased persons in course of administration. Both the 1921 Act (Sec. 202) and the 1924 Act (Sec. 204) define, generally, the "Basis for Determining Gain or Loss" from sale or other disposition of property during the tax year and the Act of 1924 (Sec. 204) also defines the basis for "Depletion, and Depreciation". These definitions are under "Part I.—General Provisions" of "Title II.—Income Tax" and; therefore, should be taken as generally applicable to all taxpayers subject to taxation under Title II, unless subsequently qualified in the Act. There are no such express qualifications here pertinent. Generally speaking and as far as here material, the basis declared in the above Acts is the value (measured by cost or inventory) of acquisition by the taxpayer. It was not until the Revenue Act of 1928 (45 Stat. 791) that Congress declared a rule specifically applicable to gains and losses from sales by executors and administrators of property coming from the testator. In Section 113 (a) (5) (45 Stat. 819) it is declared "If the property was acquired by the decedent's estate from the decedent, the basis in the hands of the estate shall be the fair market value of the property at the time of the death of decedent." This provision was effective May 28, 1928, 8 A. M., and was not retroactive. However, there was a provision in Section 702 (45 Stat. 879) which applied to earlier tax years. Subsection "(a)" of that section provided that where returns of such gains or losses had been made for a prior tax year either on the basis of value at decedent's death or on a basis "in accordance with the regulations in force at the time such return was filed", such used basis should control "unless claim for refund or credit in respect of such basis, or a written election not to come within the provisions of this

subsection" be filed by the estate within the limitation for filing claims. Petitioner here has duly filed such written election and is, therefore, not bound by this subsection. Subsection "(b)" declares that where subsection (a) does not govern, the basis for such gain or loss shall be "such basis as is in accordance with the law properly applicable thereto, without regard to any provision of this Act." The situation resulting from the above state of statutory law and from petitioner's election under Section 702 (a) is that there is no applicable statutory expression specifically dealing with the proper basis for estates of decedents.

In promulgating Regulations for carrying out the Revenue Act of 1918 (similar to the Acts of 1921 and 1924 in the matter involved here), the Department declared that the basis of estimating gains or losses on sales by an executor in calculating income taxes of the estate was the value at death of decedent. This continued the administration rule under similar Regulations as to the Acts of 1921, 1924 and 1926 until the decision of the Court of Claims in *McKinney* v. *United States* (62 Ct. Cl. 180), on May 3, 1926, which held that the basis was not value at death of decedent but acquisition value to him. Conforming to this decision, the above Regulation was replaced by one making the basis the value of acquisition by decedent. This change remained in effect several months until the decision by the Court of Claims in *Nichols* v. *United States* (64 Ct. Cl. 241), on November 7, 1927. Construing the Nichols case as overruling the McKinney case, the Department restored its former Regulation and this continued the administrative rule until passage of the Revenue Act of 1928.

The force of these Regulations in the matter before us is twofold. First, it settles the purpose of Section 702 of the Act of 1928 to be one of repose for taxpayers (not barred by limitations) who were satisfied with the basis of their returns made in accordance with value at decedent's death or in accordance with Regulations existing at the time of return. Secondly, the fact that the Regulations in force when the Acts of 1921, 1924 and 1926 were, without material change, enacted had for years continuously prescribed date of death as the basis and the first Act (that of 1928) enacted after such Regulations had been questioned prescribed that basis argue strongly for application of the rule of statutory construction that such undisturbed administrative construction is the one intended by Congress (*United States* v. *Dakota-Montana Oil Co.*, 288 U. S. 459, 466; *Mass. Mut. Life Ins. Co.* v. *United States*, 288 U. S. 269, 273; *Murphy Oil Co.* v. *Burnet*, 287 U. S. 299, 307; *Brewster* v. *Gage*, 280 U. S. 327, 336-337).

As to the decisions, there is a direct conflict. Those announcing the basis as being value at death of the decedent are *Bray, Administratrix*, 4 B. T. A. 42; *Straight, Executrix*, 7 B. T. A. 177; *Bankers Trust Co.* v. *Bowers*, 23 Fed. (2d) 941, Dist. Ct. N. Y. Those announcing the basis as being value or cost of acquisition to decedent are the following in the Court of Claims: *McKinney* v. *United States*, 62 Ct. Cl. 180 (cer. denied 273 U. S. 716); *Elmhirst* v. *United States*, 38 Fed. (2d) 915 (same as *Straight, Executrix*, 7 B. T. A. 177, above); *Myers* v. *United States*, 51 Fed. (2d) 145; and see last paragraph of opinion in *McCann* v. *United States*, 48 Fed. (2d) 446. Able discussions for the former basis are in the Straight and Bankers Trust Company cases and the dissenting opinion in the Myers case; the same as to the latter basis are in the McKinney and Elmhirst cases. Also, see *Bingham* v. *Long*, 249 Mass. 79, 144 N. E. 77.

Expressions in *Brewster* v. *Gage*, 280 U. S. 327, have been urged by the Commissioner as being a determination of this matter in his favor here. The executor argues that these expressions are *dicta*. The expressions intended are as follows (p. 335):

"The Revenue Act of 1918 and subsequent Acts taxed incomes of estates during the period of the administration including profits on sales of property, and such gains are calculated on value at date of decedent's death.* There appears to be no reason why gains or losses to the estate should be calculated on one basis and those to the residuary legatees on another."

That case involved the question of date of acquisition by a residuary legatee of personal property which he had sold in the taxable years involved. The controversy was whether his acquisition for tax purposes was the date of death of the testator or the date of distribution to the legatee. While the question there was different from that here, yet the language above quoted is the expression by the Court of one reason for its decision. It is a well considered opinion. This language was not lightly used and it may not be lightly put aside. Though not spoken as to the matter now before us, we would hesitate to regard it other than as on the very edge of controlling authority.

Much has been well said on either side in the above cases and the matter is far from being free from doubt. It seems to us,

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*"Section 219, Revenue Act of 1918, 40 Stat. 1071; Regulations 45, Art. 343.
Section 219, Revenue Act of 1921, 42 Stat. 246; Regulations 62, Art. 343.
Section 219, Revenue Act of 1924, 43 Stat. 275; Regulations 65, Art. 343.
Section 219, Revenue Act of 1926, 44 Stat. 32; Regulations 69, Art. 343."

however, that the predominance is in favor of construing the intent of Congress to be that the basis should be value at death of the decedent.

Since Congress has not expressly spoken on this specific matter in the Acts earlier than 1928, we must seek its intent from the more general provisions of the Acts—particularly those here involved, of 1921 and 1924. Both Acts define an estate of a decedent as a "taxpayer" (42 Stat. 227, Sec. 1; 43 Stat. 253 and 254, Sec. 1); both specifically provide for taxation of the income of an estate during administration (42 Stat. 246, Sec. 219; 43 Stat. 275, Sec. 219); both include profits from sale of property by the taxpayer in taxable income (42 Stat. 237, Sec. 213; 43 Stat. 256, Sec. 203) and each establishes the basis of calculating gain or loss by such sales as the value on March 1, 1913, or the latter date of acquisition (42 Stat. 229, Sec. 202; 43 Stat. 258, Sec. 204). Also, in the same Acts and as part of the general scheme of taxation under each Act is a "Title" providing for Estate Taxes of deceased persons and the "gross estate" for purposes of such taxes is "the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated" (42 Stat. 278, Sec. 402; 43 Stat. 304, Sec. 302).

From the above statutory provisions, as well as others in these Acts, not here particularly referred to, it is clear that the estate of a decedent is made a taxable unity or entity[1] both for estate taxes and for income taxes. Also, it is clear that in estimating income taxes gain or loss from sales during a taxable year are applicable to estates and also that in determining such gain or loss the value at acquisition by the taxpayer is the basis. The executor or administrator is the taxpayer of such an estate. There is no difficulty in applying to him the general statutory requirement, applicable to all individual taxpayers, that the basis shall be value at acquisition by the taxpayer. The time of acquisition by the executor or administrator is the date of his decedent's death. The value at that date conforms to the statutory basis.

The manner of acquisition is not important. The statutes clearly apply this basis to acquisitions of a closely similar character (42 Stat. 229, Sec. 202 (a), (3); 43 Stat. 258, Sec. 204 (5). The important consideration is that the statutes establish or recognize certain entities for income taxation purposes—one of these being an estate of a decedent during administration and settle-

[1] *Merchants L. & T. Co. v. Smietanka*, 255 U. S. 509, 516; *Reynolds v. Cooper*, 64 Fed. (2d) 644, 647, C. C. A. 10; *Bankers Trust Co. v. Bowers*, 295 Fed. 89, 94, C. C. A. 2; *Catherwood v. United States*, 291 Fed. 560, C. C. A. 3.

ment—and the measure prescribed for determining taxable income arising from gains or losses through sale or other realization upon property by such an entity is confined to such gains or losses accruing to such entity and no other—they are not concerned with what has happened before the property became that of the entity being taxed (*Anderson* v. *Wilson*, 289 U. S. 20, 26-27; *Brewster* v. *Gage*, 280 U. S. 327, 335; *Merchants' Loan & Trust Co.* v. *Smietanka*, 255 U. S. 509, 516-517; *Busch* v. *Commissioner*, 50 Fed. (2d) 800, 802, C. C. A. 5; *McCann* v. *United States*, 48 Fed. (2d) 446, 448, Ct. Cl.; *Abell* v. *Tait*, 30 Fed. (2d) 54, 55, C. C. A. 4; *Whitcomb* v. *Blair*, 25 Fed. (2d) 528, 529, C. A. Dist. of Col.; *Baltzell* v. *Mitchell*, 3 Fed. (2d) 428, 431, C. C. A. 1, cer. den. 268 U. S. 690; *Bankers' Trust Co.* v. *Bowers*, 295 Fed. 89, 94, C. C. A. 2; *Nichols* v. *United States*, 64 Ct. Cl. 241, cer. denied 277 U. S. 584).

If there be doubt as to the meaning of these statutes when all pertinent parts are considered, then another reason for construing the statutes as fixing the basis as being value at death of the decedent is that the basis must be either that or acquisition value to the decedent and that the latter would lead to injustice. The injustice arises from the situation that the "gross estate" prescribed for the Estate Tax is the value of all property of decedent at the time of death. Such valuation necessarily reflects increases or decreases in value of each property item occurring between time of acquisition by decedent and time of his death—if the value has increased that increase is taxed while if it has decreased that decrease diminishes the gross estate value to the same extent. Thus, such increase or decrease directly affects the amount of Estate Tax. From this situation, the injustice of making acquisition value to decedent the basis for income taxation of the estate manifests itself in one of two ways (dependent on the movement of value of the property) and results either in double taxation or in escape (partial or entire) from taxation intended by the statutes. The only other basis suggested as possible—the use of value at death of decedent—avoids both of these results and, therefore, should be adopted as the meaning of the statutes since there is nothing in the entire expression in these two income tax statutes forbidding or even inconsistent with its use. This rule that statutes should be construed to prevent hardship or unjust consequences unless the language of the statutes compels a different conclusion is here applicable, is salutary and is firmly established (*Burnet* v. *Guggenheim*, 288 U. S. 280, 285; *Knowlton* v. *Moore*, 178 U. S. 41, 77; *Piper* v. *Willcuts*, 64 Fed. (2d) 813, 814, C. C. A. 8; *Grier* v. *Kennan*, 64 Fed. (2d) 605, 607, C. C. A. 8; *Missouri*

Pac. R. Co. v. *Holt*, 293 Fed. 155, 162, C. C. A. 8, cer. denied, 264 U. S. 584; *Bankers' Trust Co.* v. *Bowers*, 295 Fed. 89, 96, C. C. A. 2).

We must conclude that the Board correctly affirmed the action of the Commissioner in taking value at time of death of Hartley as the basis for estimating gain or loss on sales, during these tax years, by the executor of property belonging to the estate. For the same general reasons, estimates of depreciation or depletion of such properties should be upon the same value basis.

II.

DEDUCTION OF SALARY AND EXPENSE ITEMS IN 1925.

In taxpayer's returns for these years (1924 and 1925), he claimed certain deductions for salaries, for expenses and for accountant's fees. The Commissioner materially reduced each of these items for each year. The Board reversed this determination of the Commissioner as to the items in 1924 (allowing them in full) but sustained the reductions as to 1925. It is of this latter action, the executor here complains.

The estate of Hartley included various securities, fifteen iron mines operated under royalty leases, and several thousand pieces of real estate (consisting of farms and improved city rental properties). In the conduct of this business, decedent maintained a considerable office organization which was supervised by a general office manager who employed assistants, bookkeepers, stenographers, and an engineer who supervised collection of royalties on the iron mines. This organization was continued by the executor and was in operation during 1924 and 1925. The items claimed as deductions for these two years were the salaries and expenses of this organization and certain accountant fees. There was no distribution of the estate until February 24, 1925. On that date there was distribution of all of the personalty (except certain bonds necessary to provide annuities required by the will), the home place and one quarter section of land in Itasca County on which was an iron mine. There was no other distribution of real estate until 1928. After this distribution this organization continued conduct of the distributed properties as if they were still included in the estate. The value of the distributed property was apparently above two-thirds of the value of the entire estate.

There is no claim that these expenditures were not proper or necessary. The Commissioner disallowed something more than

one-third of the salaries ($6,191.67), one-half the expenses ($1,027.30), and more than two-thirds of the accountant ($1,663.14) items for 1925. His reason as to all was an apportionment between estate and distributed property service and as to the accountant item the additional reason that some of such service was attributable to administration of the estate and not to the income-producing business of the estate. The Board sustained the Commissioner as to these reductions on the ground that the executor had "failed to overcome the presumptive correctness of the respondent's determination."

The executor is silent here as to the item of accountant's fees. As to salaries and expenses there is no opposition here to an apportionment because of the distribution but the claims are: First, that since the distribution did not occur until after two months (roughly) of 1925 had passed, one-sixth of the salaries and expenses should be allowed *in toto;* and, second, that the property distributed was of a character (securities and only one mine) requiring little time and effort from the organization while that remaining in the estate (consisting of mines and real estate holdings) require much time and attention. There is an appealing plausibility in this argument but the record here is barren of any facts wherefrom we can say with proper certainty that the Commissioner and the Board both have erred and if so to what extent. We must conclude that the Board was correct in its statement and conclusion as to this matter.

III.

LOSSES OF 1923.

In 1923, the estate paid the federal estate tax on this estate. This resulted in a net loss to the estate for that year. This loss the executor seeks to carry forward into 1924 (in the amount of $75,100.60) and 1925 ($52,820.57) under the provisions of Section 206 of the Act of 1924 (43 Stat. 260). The Board sustained rejection of these deductions on two grounds: First, no evidence of loss sustained in 1923; and, second, even if the amount of loss had been established, it could not be carried forward into a subsequent year. The executor contends: First, that a stipulation before the Board withdrew the question of amount of loss and left that to be determined under "Rule 50" and, therefore, only the law question of the propriety of carrying forward a loss was before the Board; and second, that the statute authorized carrying forward of such loss. We need determine only the second contention.

The executor properly concedes that the statute providing for carrying forward losses applies only to losses resulting from operation of a business by the taxpayer (*Dalton* v. *Bowers*, 287 U. S. 404; *Ames* v. *Commissioner*, 49 Fed. (2d) 853, 854, C. C. A. 8; *Refling* v. *Burnet*, 47 Fed. (2d) 859, 860, C. C. A. 8). His contention is that the estate was carrying on a business and that the estate tax is an expense and loss of such business because it is a lien upon all the property of the estate and it is only by paying such tax that the estate and its business can be preserved. It may be conceded that this estate was carrying on a business within the meaning of the statute and that the preservation of the estate and of its business required payment of the tax but that does not meet the statutory requirement that the loss must arise from and out of the *operation* of the business (see cases last above cited). An estate tax arises from passage of property from a decedent and is upon the privilege of such transfer (*Chase Nat. Bank* v. *United States*, 278 U. S. 327, 334; *Young Men's Christian Ass'n.* v. *Davis*, 264 U. S. 47, 50; *Schuette* v. *Bowers*, 40 Fed. (2d) 208, 210, C. C. A. 2; *Frew* v. *Bowers*, 12 Fed. (2d) 625, 626, C. C. A. 2). It has no legal connection with the operation of a business and cannot arise from or out of such operation. The contention must be denied (see *Ames* v. *Commissioner*, 49 Fed. (2d) 853, 854, 855, C. C. A. 8 and *Refling* v. *Burnet*, 47 Fed. (2d) 859, 860, 861, C. C. A. 8).

PETITION OF THE COMMISSIONER.

The complaint of the Commissioner here is that the Board erred in rejecting his reduction of the salaries, expenses and accountant's fees claimed as deductions by the taxpayer for the year 1924. In the notice of deficiency the reasons stated by the Commissioner for the disallowance was that a portion of the salaries and expenses was for services on distributed property and a portion of the accountant's fees were for service in connection with the administration of the estate as distinguished from the business of the estate. The Commissioner now takes the position that he contended before the Board that the reductions in salary and expense items should stand because a portion of the services covered thereby were for administration matters as distinguished from the business of the estate. The Board ruled against the salary and expense reductions because there was no distribution of the estate before 1925. As reflected in the deficiencies ordered by the Board, this seems to have been treated as a ruling on accountant's fees also.

As to salaries and expenses, there is no warrant in the record for the contention that the Commissioner urged before the Board the matter of administration service as a ground for the reductions, therefore, we pass that by as not being before us. Obviously, the ground of distributed estate is not sound since there was no distribution of any part of the estate until the following year of 1925.

As to accountant's fees the record is different. The deficiency notice bases the reduction of $1,400.21 (from $2,000.21) "as being administrative work in connection with income tax of decedent and Federal Estate Tax." The Board made no specific finding or statement in its opinion regarding this item. The entire evidence before the Board on this matter was by the accountant, as follows: "The accountant's fees for the years 1924 and 1925, noted in the returns, were for services rendered almost altogether in connection with the current affairs of the estate as accountant and income tax advisor and the amounts are set forth in the sixty day letter accompanying the petition. I was engaged during this period, to a considerable extent, in looking over the tax matters of Mr. Hartley, prior to his death, and the final settlement of those old cases came before the Board of Tax Appeals, I think, largely about 1928, and my services in that connection were paid principally at the conclusion of the contest on those cases."

This evidence is rather confusing but it does clearly state that considerable time was devoted by the accountant to matters concerned with the income tax of the decedent. Obviously, such services are not deductible from the income of the estate because they relate entirely to matters occurring before there was any such estate and are administration charges against the estate. Since this evidence shows there should be a reduction in this respect and since it fails to show that the reduction made by the Commissioner is erroneous, we think the Board erred in denying this reduction.

CONCLUSION.

The order of the Board is modified to the extent of reducing the allowable deduction for accountant's fees for 1924 by $1,400.21 and as so modified is affirmed. The cause is remanded to the Board for proceedings in accord with this modification.

126 (Decree in Causes Nos. 9946 and 9943.)

United States Circuit Court of Appeals,
Eighth Circuit.

May Term, 1934.

Monday, July 9, 1934.

Cavour Hartley, Executor of the Estate of G. G. Hartley,
Petitioner,
No. 9946. vs.
Commissioner of Internal Revenue.

On Petition to Review Decision of United States Board of Tax Appeals.

Commissioner of Internal Revenue, Petitioner,
No. 9943. vs.
Cavour Hartley, Executor of the Estate of G. G. Hartley.

On Petition to Review Decision of United States Board of Tax Appeals.

These matters came on to be heard on petitions (cross-appeals) to review an order of the United States Board of Tax Appeals which affirmed in part and reversed in part a determination by the Commissioner of Internal Revenue of income taxes due, for the taxable years 1924 and 1925, from the Executor of the Estate of G. G. Hartley, deceased, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged and decreed, by this Court, that the order of the said Board of Tax Appeals in these matters, be, and the same is hereby modified to the extent of reducing the allowable deduction for accountant's fees for the year 1924 by One Thousand Four Hundred and 21/100 ($1,400.21) Dollars, and as so modified the said order is hereby affirmed.

127 It is further ordered that these matters be, and the same are hereby, remanded to the said Board of Tax Appeals for proceedings in accord with this modification.

July 9, 1934.

128 United States Circuit Court of Appeals,
Eighth Circuit.

Tax Review.

Cavour Hartley, Executor of the Estate of G. G. Hartley,
Petitioner,
No. 9946. vs.
Commissioner of Internal Revenue, Respondent.

Commissioner of Internal Revenue, Petitioner,
No. 9943. vs.
Cavour Hartley, Executor of the Estate of G. G. Hartley,
Respondent.

Petition for Rehearing and/or Amendment of Opinion.

To the Honorable Judges of the United States Circuit Court of Appeals for the Eighth Circuit:

Comes now Cavour Hartley, executor of the estate of G. G. Hartley, petitioner and respondent, respectively, in the two cross appeals above named and respectfully presents this petition for a reconsideration of the opinion in the above named causes, which opinion was filed on the 6th day of July, 1934, upon a single material point or statement of fact in which petitioner believes the court inadvertently fell into substantial error; and which is of a serious nature requiring correction:

Petitioner respectfully points out that:

In the opinion of the court (on pages 12 and 13 of the typewritten copy forwarded to counsel by the clerk of the above named court) the following statement appears:

"As to accountant's fees the record is different. The deficiency notice bases the reduction of $1,400.21 (from
129 $2,000.21) 'as being administrative work in connection with income tax of decedent and Federal Estate Tax.' The Board made no specific finding or statement in its opinion regarding this item. The entire evidence before the Board on this matter was by the accountant, as follows: 'The accountant's fees for the years 1924 and 1925, noted in the returns, were for services rendered almost altogether in connection with the current affairs of the estate as accountant and income tax advisor and the amounts are set forth in the sixty day letter accompanying the petition. I was engaged during this period, to a considerable extent, in looking over the tax matters of Mr. Hartley, prior to his death, and the final settlement of those old cases came before the Board of Tax Appeals, I think, largely about 1928, and my services in

that connection were paid principally at the conclusion of the contest on those cases.'

"This evidence is rather confusing but it does clearly state that considerable time was devoted by the accountant to matters concerned with the income tax of the decedent. Obviously, such services are not deductible from the income of the estate because they relate entirely to matters occurring before there was any such estate and are administration charges against the estate. Since this evidence shows there should be a reduction in this respect and since it fails to show that the reduction made by the Commissioner is erroneous, we think the Board erred in denying this reduction."

The following testimony, taken word for word from the official report of proceedings before the United States Board of Tax Appeals by E. J. Walton, official reporter of the United States Board of Tax Appeals, is all the testimony relative to accountant's fees given by Mr. Frank Wilson at the hearing of the above cause before the United States Board of Tax Appeals at St. Paul, Minnesota, on July 26, 1932:

"Direct Examination.

By Mr. Fryberger:

Q. For the purpose of the record, will you state your name and business?

A. Frank W. Wilson, public accountant.

Q. Have you had charge of the accounting, making up of these returns in the Hartley Estate, from time to time?

A. I have.

Q. And are you familiar with such returns and the figures of the estate?

130 A. I am.

Q. Now, calling your attention to the return for 1924 and 1925, was there any election in writing made in reference to those matters? A. There was, yes.

Q. State the facts and details concerning that matter.

A. Under the provisions of Section 702 of the Revenue Act of 1928, I filed with the Commissioner of Internal Revenue the election of the executor of the estate of G. G. Hartley, not to come within the provision of sub-section A of said Section 702 of the Revenue Act of 1928. I filed that election on July 27, 1928.

Q. For both years?

A. For all years prior to the date of the filing of the election.

Q. Anything further with reference to that matter that you wish to testify to? A. Nothing at all.

Q. Now, calling your attention to the accountant's fees of 1924 and 1925, will you give the details with reference to that, and what it was for?

A. The amounts paid in those years were for services rendered almost altogether in connection with the current affairs of the estate, as accountant and income tax advisor.

Q. The amounts are in the record?

A. The amounts are set forth in the sixty-day letter accompanying the petition.

Q. Have you any further testimony to give along that line?

A. None, except to state that during this period I was engaged to a considerable extent in working over the tax matters of Mr. Hartley prior to his death. The final settlement of those old cases came before this Board, I think, largely, about 1928, and my services in that connection were paid principally at the conclusion of the contest of those cases.

Mr. Fryberger: I think that is all.

Mr. Coon: No cross-examination."

The testimony relative to accountant's fees quoted in the excerpt of opinion above set forth is in the narrative form. A reading of the testimony in this form might well leave some confusion in the Court's mind, but the actual testimony on this point which petitioner has taken the liberty of
131 setting out here as adduced before the Board leaves no doubt as to its true meaning.

Petitioner respectfully points out that from this testimony it is clear that the amounts paid Mr. Wilson for accountant's fees during 1924 and 1925, which were the only amounts claimed by petitioner as deductions for accountant's fees in his returns for those years were for services rendered in connection with the current affairs of the estate.

Petitioner further respectfully points out, that the fees earned by Mr. Wilson in connection with tax matters arising prior to Mr. Hartley's death were not paid in 1924 and 1925, but at the conclusion of those cases in 1928 and no attempt was made to include these fees in the deductions claimed in the 1924 and 1925 returns.

In other words, the accountant's fees incurred in connection with the current affairs of the estate in 1924 and 1925 were paid during those years, were claimed as deductions in

taxpayer's returns for those years, and were at all times kept separate and distinct from the accountant's fees earned for work done on tax matters arising prior to Mr. Hartley's death. Payment for that work was not made until 1928 and those items were never included in the deductions, petitioner claimed in his income tax returns for 1924 and 1925.

The witness in his statement: "my services in that connection" was referring to the services rendered in connection with tax matters arising prior to Mr. Hartley's death. These cases arising prior to Mr. Hartley's death were matters entirely separated from the accountant's services rendered in connection with the income tax returns for 1924 and 1925, which latter items were paid for during those years and long prior to the payment in 1928 for services in connection with the tax matters arising prior to the death of the decedent.

We think the use of the narrative form and throwing the last sentence of the narrative referring to this 1928 payment in so close connection and in the same paragraph with the 1924 and 1925 payments has mislead the court as to the true intent and meaning of the accountant's testimony, all of which more fully appears from the official report of the proceedings before the United States Board of Tax Appeals. Apparently the Court has understood the testimony of the accountant to mean that his services for the income tax matters in 1924 and 1925 were paid for at the same time as these other services, which were actually paid for in 1928, while, as a matter of fact, they were entirely separate payments, having no connection with each other in time or purpose. We emphasize that while the accountant's work on the current affairs of the estate, for which deductions
132 were claimed, and on the tax matters arising prior to Mr. Hartley's death for which no deductions were claimed was to a certain extent done concurrently, that payments for each were separate, payments for work on the current affairs of the estate being made in 1924 and 1925 and the payment for services rendered in tax matters arising prior to Mr. Hartley's death, being made in 1928.

Thus, petitioner respectfully submits that the statements quoted from the opinion are not in accordance with the facts of record in this cause as shown above.

Wherefore, petitioner requests the Court to grant a rehearing on said disputed point or eliminate the statement above quoted from the said opinion, and correct and modify said opinion accordingly, and modify the conclusion of said

opinion to read: "The order of the Board of Tax Appeals is in all things affirmed."

Respectfully submitted,

CAVOUR HARTLEY,
Executor of the Estate of G. G. Hartley, Petitioner,
By H. B. Fryberger,
H. C. Fulton,
E. L. Boyle,
William B. Fryberger.

We hereby certify that the foregoing petition based upon facts appearing in the record of case is well found in law and in fact, and that it is not interposed for the purpose of delay.

Dated at Duluth, Minnesota, this 26th day of July, 1934.

H. B. FRYBERGER,
H. C. FULTON,
E. L. BOYLE,
WILLIAM B. FRYBERGER.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Aug. 2, 1934.

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133 (Order Denying Petition of Cavour Hartley for a Rehearing.)

October Term, 1934.

Wednesday, October 17, 1934.

The petition for rehearing in these causes, filed by counsel for Cavour Hartley, Executor, etc., having been considered, It is now here ordered by the Court that the same be, and it is hereby, denied.

October 17, 1934.

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134 (Clerk's Certificate.)

United States Circuit Court of Appeals,
Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the records on petition to review the decision of the United States Board of Tax Appeals as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the

supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in certain causes in said Circuit Court of Appeals wherein the Commissioner of Internal Revenue was Petitioner and Cavour Hartley, Executor of the Estate of G. G. Hartley, was Respondent, No. 9943, and wherein Cavour Hartley, Executor of the Estate of G. G. Hartley, was Petitioner, and Commissioner of Internal Revenue was Respondent, No. 9946, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that on the twenty-ninth day of October, A. D. 1934, a mandate was issued out of said Circuit Court of Appeals in said causes, directed to the United States Board of Tax Appeals.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this fifteenth day of December, A. D. 1934.

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Seal)

[fol. 135] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 4, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.